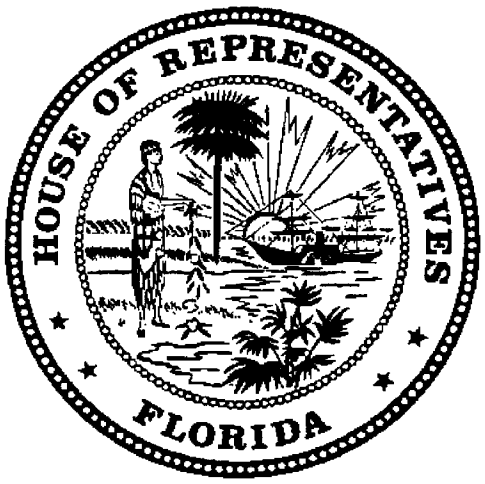

COMMERCE COUNCIL MEETING PACKET

MONDAY, APRIL 24, 2006
9:00 A.M. – 12:00 P.M.
ROOM 404-HOB

Allan G. Bense
Speaker

Frank Farkas
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Commerce Council

Start Date and Time:	Monday, April 24, 2006 09:00 am
End Date and Time:	Monday, April 24, 2006 12:00 pm
Location:	404 HOB
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 7225 CS Property and Casualty Insurance by Insurance Committee
HB 7227 CS Florida Hurricane Damage Prevention Trust Fund by Insurance Committee
HB 1473 CS (IF RECEIVED) -- Energy by Hasner

After the 45th day of a regular session, the amendment deadline for nonappointed members is two hours prior to the scheduled meeting.

NOTICE FINALIZED on 04/21/2006 16:08 by GLATFELTER.SUKIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7225 CS PCB IN 06-01 Property and Casualty Insurance
SPONSOR(S): Insurance Committee
TIED BILLS: HB 7227 **IDEN./SIM. BILLS:** SB 1980/SB 2166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	10 Y, 6 N	Callaway	Cooper
1) Fiscal Council	13 Y, 4 N, w/CS	Belcher	Kelly
2) Commerce Council		Callaway	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill makes the following major changes to property insurance affecting homeowners in Florida:
Florida Hurricane Catastrophe Fund (FHCF): Includes a rapid cash buildup of 25% for the FHCF. Extends the date medical malpractice insurance is excluded from the FHCF assessment base.

Hurricane Mitigation: Establishes a hurricane mitigation endowment fund to allow homeowners to obtain no-interest loans to implement hurricane mitigation measures for their homes. Establishes a four-part hurricane mitigation program to provide hurricane inspection grants; grants for installation of hurricane mitigation measures for homeowners, local governments, and nonprofits; loans for installation of hurricane mitigation measures; and public awareness/education.

Office of Insurance Regulation/Rate Review: Allows property insurers to vary their approved insurance rate up or down 5% statewide or 10% per rating territory without obtaining regulatory approval of the change. Restricts the Office of Insurance Regulation (OIR) and the Insurance Consumer Advocate from questioning insurers about certain aspects of the hurricane models insurers use to justify a rate filing. Restricts the OIR from using the public hurricane model in rate filings until it is found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology. Requires the OIR to adopt standard emergency rules to be used after a natural disaster and gives the Insurance Commissioner power to adopt emergency rules.

Citizens Property Insurance Corporation (Citizens): Requires Citizens to treat homestead and nonhomestead property differently regarding rate setting and deficit assessment. Establishes rates based upon a 100 year possible maximum loss (PML) for homestead and 250 year PML for nonhomestead. Allows authorized insurers to establish rates for nonhomestead without being subject to review for excessiveness. Reallocates Citizens' deficit assessments and requires Citizens' homestead policyholders to pay a surcharge to cover their portion of a deficit assessment. Prohibits Citizens from insuring homes insured for $1 million or more or condominium unit owner's contents and dwelling policies insured for $1 million or more. Allows authorized insurers to write policies excluded from Citizens under the $1 million exclusion without rate regulation for excessiveness. Requires Citizens to purchase reinsurance for the nonhomestead account. Allows Citizens to include a residual market risk load in its rates. Restricts payment of take-out bonuses by Citizens to $100 per policy. Extends the reduction of Citizens' wind-only zones. Strengthens ethics and fraud reporting requirements for Citizens' managers and employees.

Other Major Changes: Requires replacement costs to be paid in advance on dwellings only. Authorizes the Florida Insurance Guaranty Association to issue revenue bonds for hurricane recovery. Creates a Task Force to study issues relating to hurricane insurance and mitigation for mobile homes. Requires reports from OIR on the insurability of attached and free-standing structures and on the feasibility of allowing policyholders to reduce their hurricane deductibles for mitigation steps taken.

The bill appropriates $500 million from the General Revenue Fund for the endowment and damage mitigation programs. The bill also appropriates $920 million from the General Revenue Fund to cover the regular assessments for the 2005 Citizens' deficit accounts. The bill appropriates $675,000 from the Insurance Regulatory Trust Fund to OIR to fund costs associated with the bill. The bill impacts the private sector. See Fiscal Section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: Establishing a no-interest loan program and providing for wind certification and hurricane mitigation inspections provides an opportunity for homeowners to take responsibility for protecting their homes.

Placing the hurricane deductible at 5% for all nonhomestead properties in Citizens valued at $250,000 or more may require homeowners of such properties to pay more in out-of-pocket costs for deductibles.

Excluding homes insured for $1 million or more from Citizens will require those homeowners to find insurance coverage from surplus lines insurers or authorized insurers writing on an individual rate basis.

Citizens' nonhomestead policyholders must satisfy any deficit among themselves rather than relying on all Florida homeowners to contribute to the deficit reduction.

Providing insurance agents and their employees with immunity relating to coverage differences and insolvencies of insurers participating in Citizens' depopulation will protect these individuals from suit.

Limited Government: Allowing insurers to flex rate residential property will allow rate variations without approval by the OIR.

Providing automatic approval of rate changes for private insurers' filed rate for the wind portion of a policy eligible for the Citizens' High Risk Account if the rate change is less than the Citizens' approved rate for a similar policy will allow rate variations without approval by the OIR.

Requiring the OIR to enact emergency rules covering insurer's actions after a natural disaster will prevent the OIR from having to issue such rules after each natural disaster.

Excluding homes valued at $1 million or more from Citizens will decrease the number of policies in this quasi-public insurer.

Requiring nonhomestead policyholder to get a declination from surplus lines insurers and authorized insurers before being eligible for Citizens should decrease the number of policies in this quasi-public insurer.

The bill creates an endowment and grant program within the Department of Financial Services (DFS) and authorizes new rule-making.

Ensure Lower Taxes: Requiring Citizens' homestead property owners to be included in the deficit calculation and division will spread the deficit assessment over more policyholders, thus reducing the amount of any assessment.

Empower Families: The bill's provisions relating to no-interest loans for hurricane mitigation measures and grants for hurricane inspections will help harden homes to prevent or reduce hurricane damage.

B. EFFECT OF PROPOSED CHANGES:

The 2004 and 2005 Hurricane Seasons

The 2004 hurricane season was particularly destructive for Florida, with four hurricanes causing extensive damage throughout the state. All four hurricanes occurred within a 45-day period beginning August 13. 2004, when Hurricane Charley made landfall as a category 4 hurricane with wind speeds of 145 miles per hour; followed on September 4 by Hurricane Frances, a Category 2 hurricane with wind speeds of 105 miles per hour. Next, Hurricane Ivan struck on September 16 followed by Hurricane Jeanne on September 26, which were both Category 3 hurricanes with respective winds speeds of 130 and 120 miles per hour at landfall. The paths of the hurricanes indicated virtually no part of Florida is immune from hurricane risk. Allegedly, the 2004 hurricanes caused damage to an estimated one in every five homes in Florida. Every county in Florida but Liberty County reported losses as a result of the 2004 hurricane season.[1]

The four hurricanes in 2004 are responsible for 1.7 million insurance claims and $26.1 billion dollars of insured losses in the Florida market.[2] The primary insurers incurred $11.3 billion in losses (of this amount, Citizens incurred $1.8 billion), the reinsurers incurred $5.75 billion, and the Florida Hurricane Catastrophe Fund (FHCF) incurred $3.85 billion.[3]

For the most part, the insurance and reinsurance industry recapitalized after the 2004 hurricane season. That is, the capital lost by primary insurers and reinsurers was replenished. Additionally, the FHCF was able to pay its share of the losses out of cash reserves and maintain a cash balance to use to pay claims to start the 2005 hurricane season.

However, as the state was still recovering, recapitalizing, and rebuilding from the 2004 hurricanes, the 2005 season began. The 2005 hurricane season was also destructive for Florida, with four hurricanes hitting Florida for the second year in a row.

Hurricane Dennis hit Florida in the early part of hurricane season, making landfall on July 10, 2005, on Santa Rosa Island with maximum sustained winds of 121 miles per hour, making it a category three hurricane. Its center moved across the western Florida panhandle into southwest Alabama.[4]

The estimated gross property loss in Florida caused by Hurricane Dennis is close to $1.4 billion. Over 57,000 insurance claims resulted from this hurricane.[5]

Hurricane Katrina hit Florida on August 25, 2005, and moved west across the southern portion of the state and into the Gulf of Mexico. At landfall, Hurricane Katrina was a category 1 storm with maximum sustained winds of 81 miles per hour.[6] Although Florida did not sustain as severe damage as New Orleans, Louisiana; Biloxi, Mississippi and surrounding areas, Hurricane Katrina caused an estimated gross property loss in Florida of approximately $1.8 billion due to almost 162,000 insurance claims.[7]

The next hurricane to hit Florida in 2005 was Hurricane Rita which made landfall on September 20, 2005. Like Hurricane Katrina, Hurricane Rita moved west across the southern part of the state with maximum sustained winds of 105 miles per hour, making it a category 2 hurricane.[8] It is estimated that Hurricane Rita caused an estimated gross property loss in Florida of $157 million due to an estimated 4,000 insurance claims.[9]

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[1] The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 5.
[2] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 11. (citing the OIR's disaster reporting data system)
[3] Id.
[4] http://www.nhc.noaa.gov/pdf/TCR-AL042005_Dennis.pdf (last viewed February 6, 2006).
[5] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.
[6] http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf (last viewed March 9, 2006).
[7] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.
[8] http://www.nhc.noaa.gov/archive/2005/pub/al182005.public_a.013.shtml? (last viewed March 12, 2006).
[9] Id.

Hurricane Wilma moved across the southern portion of Florida taking the opposite path of Hurricanes Katrina and Rita. It moved eastward across Florida from the Gulf of Mexico to the Atlantic Ocean. It made landfall on October 24, 2005, near Cape Romano, Florida with wind speeds of 121 miles per hour, a category 3 hurricane.[10] Insured losses from Hurricane Wilma are estimated at $10.8 billion, making it the costliest hurricane for Florida in 2005.[11] As of March 30, 2005, over 950,000 insurance claims have been filed for Hurricane Wilma and insurers have paid claims totaling over $8 million.[12]

Claim and loss statistics and the loss distribution among primary insurers, reinsurance, and the FHCF are still in development and being reported, but the four 2005 storms are estimated to have generated a combined 1 million claims and an estimated $14 billion in insured losses in Florida.[13] As of February 28, 2006, insurers have already paid over $4 billion in insurance proceeds for claims from the 2005 hurricane season.[14]

Insurers' losses from the 2004 and 2005 hurricanes as well as meteorological expectations that the increase in hurricane activity will continue for the foreseeable future have caused both insurers and reinsurers to reevaluate their tolerance for risk as well as the related amount of additional capital they are willing to commit to Florida. Some insurers have added new underwriting restrictions to reflect changes in their exposure tolerance. Others have nonrenewed or cancelled policies. Still others have raised rates. In fact, since 2004 the top five insurers by market share have raised rates by an average of 28.6% with an average per year increase of 11.8%.[15]

Since the 2005 hurricanes, the reinsurance market has partly recapitalized, but not yet fully replenished their investment capital.[16] According to reports from the insurance industry, the reinsurance market is showing some signs that reinsurers are reconsidering the risk/return relationships available when compared with other investment opportunities. Reinsurance rates for wind reinsurance along the Gulf states are increasing for reinsurance purchased in 2006. In addition, reinsurers are increasing the retention levels for reinsurance.

Florida Hurricane Catastrophe Fund (FHCF or fund)

Background

The Florida Hurricane Catastrophe Fund (FHCF or "fund") is a tax-exempt trust fund created after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.[17] All insurers who write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention/deductible.

Because the FHCF provides insurers an additional source of reinsurance to what is available in the private market, insurers are generally able to write more residential property insurance in the state than could otherwise be written. Because reinsurance purchased through the FHCF is significantly less expensive than private reinsurance, the FHCF also acts to lower residential property insurance premiums for consumers.

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[10] http://www.nhc.noaa.gov/pdf/TCR-AL242005_Wilma.pdf (last viewed March 9, 2006).
[11] Hurricane Season 2005 Hurricane Wilma Reporting Summaries as of March 30, 2005, prepared by the OIR.
[12] Id.
[13] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006.
[14] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006.
[15] Personal communication from a representative of the Office of Insurance Regulation on file with the Insurance Committee.
[16] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 12. (citing the Reinsurance Association of America).
[17] s. 215.555, F.S. (2005).

The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. Each insurer's "reimbursement premium" is different, based on the insured value of the residential property it insures, their location, construction type, deductible amounts, and other factors.

Under current law, the maximum amount the FHCF must pay in any 1 year is $15 billion, adjusted annually based on the percentage growth in fund exposure, but not to exceed the dollar growth in the cash balance of the fund.[18] The total industry retention is $4.5 billion per hurricane, also adjusted annually based on the FHCF's exposure (regardless of any change in the FHCF's cash balance).[19]

The FHCF generally operates on a "contract year." The contract year runs from June 1st to May 31st of the next calendar year. The start of hurricane season coincides with the start of the fund's contract year.

For the current 2005-06 contract year (June 1, 2005 – May 31, 2006), the insurance industry as a whole has an aggregate retention of $4.5 billion, meaning the total of all individual insurer retentions/deductibles will hypothetically total to $4.5 billion per event, assuming all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $4.5 billion, loss recovery from the FHCF is based on an individual insurer meeting its own retention prior to losses being reimbursed. The industry aggregate retention is expected to grow to $5.4 billion for the 2006-2007 contract year.

Each insurer must meet a retention/deductible before FHCF monies are available to pay claims. The retention level for each insurer is different because the retention level is based on the amount of premium the insurer pays to the FHCF. Insurers with a high FHCF premium will absorb more as a retention/deductible than an insurer with a low FHCF premium. The insurer must meet its retention level for each storm in a hurricane season before the FHCF will step in to pay its claims. For insurers who experience losses due to multiple storms in a year, the insurer's full retention is applied to the two storms causing its two largest losses and its retention for the other storms causing loss is one-third of the full retention.[20]

As with the FHCF retention/deductible levels, every insurer participating in the FHCF has coverage based on its FHCF reimbursement premium. Each insurer has a maximum amount of coverage the FHCF will pay for claims each year. The maximum amount of coverage is different for each insurer because it is linked directly to the amount of premiums the insurer pays to the FHCF. Thus, insurers that pay higher premiums to the FHCF have more coverage than those that pay lower premiums. For the current contract year (2005-2006), the insurance industry as a whole is covered for up to $15 billion, meaning $15 billion is the most the FHCF will pay to the insurance industry on claims for a hurricane season. The coverage limit for the fund for the 2006-2007 contract year will remain at $15 billion because the fund's capacity does not grow in years the fund's cash balance declines. This will happen in 2005 due to payouts on 2005 hurricane losses.

Additionally, insurers also choose a percentage level of reimbursement by the FHCF. By statute, insurers can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its deductible/retention for each hurricane.[21] Most insurers choose the 90 percent reimbursement percentage.[22] This means once an insurer triggers FHCF coverage, 90 percent of its losses will be covered by the FHCF, up to the insurer's limit of coverage. Insurers may purchase additional reinsurance in the private market to cover their hurricane losses for amounts below the retention,

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[18] s. 215.555((4)(c)1., F.S. (2005).
[19] s. 215.555(1)(e)1., F.S. (2005).
[20] s. 215.555(1)(e)4., F.S. (2005).
[21] s. 215.555(1)(e)2., F.S. (2005).
[22] Florida Hurricane Catastrophe Fund, Fiscal Year 2003-2004 Annual Report 23.

amounts above their reimbursement limit, or for the coinsurance amount (e.g., 10%) that is the insurer's responsibility for the layer of coverage provided by the FHCF.

If the cash balance of the fund is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders.[23] The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation and, until June 1, 2007, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations.[24] Annual assessments (which have never been levied) are capped at 6% of premium with respect to losses from any 1 year and a maximum of 10% of premium to fund hurricane losses from multiple years.[25]

The FHCF is expected to pay out $3.8 billion to insurers as a result of the 2004 hurricanes; to date, the fund has already paid $3.5 billion to insurers. Because the amount paid in 2004 was less than the FHCF's cash balance, bonding was not necessary. However, the loss estimates for the FHCF are estimates and as losses develop, the actual payments may exceed the current estimates.

For the current 2005-2006 contract year, the fund's $15 billion capacity consists of $3 billion in cash (before losses) and $12 billion in bonding capacity. The FHCF was initially expected to pay out at least $3.3 billion to insurers as a result of the 2005 hurricane season, of which about $2.2 billion had actually been paid by the fund to insurers. The remainder is paid out as insurers request reimbursement and provide proof of losses. However, the loss estimates for 2005 have recently been significantly increased based on the latest loss reports, which will require bonding and assessments. The fund had previously estimated a cash shortfall of $264 million based solely on insurer loss reports. However, on April 5, 2006, representatives of the fund stated the latest loss estimates will result in a deficit of $1.55 billion.[26] This is based on both reported losses and an estimate of incurred but not reported losses. But, the $1.55 billion deficit will be reduced to $1.35 billion, due to an estimated $200 million in revenue from the 25 percent "rapid cash build up" factor the SBA approved for the 2006 premium formula.

It is anticipated the fund will have to bond in order to defray its deficit. Bonding will result in assessments against all property and casualty insurance policyholders except workers' compensation and medical malpractice. Given the broad assessment base, it is unlikely the assessments will exceed 1% of premium, but is dependent on the term of the debt and the unknown, potential losses for the 2006-2007 contract year and subsequent years.

Because the FHCF is not likely to have cash to carry over to fund claims resulting from the 2006 hurricane season, it will have to rely solely on premiums collected in 2006 to reimburse insurers for losses. This makes bonding more likely if the fund has to pay claims as a result of 2006 hurricanes. The fund's anticipated premium revenue for 2006 equals $750 million. However, premiums to the FHCF are paid by insurers in three installments. Thus, $750 million is not likely to be available to pay claims at the start of the 2006-2007 contract year (June 1, 2006). Rather, the fund anticipates a cash inflow of $250 million by August 1, 2006, another $250 million by October 1, 2006, and a final $250 million by December 1, 2006. Thus, should an early season hurricane occur, it may be necessary for the FHCF to borrow money to cover losses. For low amounts of losses, this could be done with a simple bridge loan. For large amounts of loss, revenue bonds would need to be issued.

In summary, from the inception of the fund in 1993 until the 2004 hurricane season, the fund paid insurers for claims for only two hurricanes, Hurricanes Erin and Opal in 1995. Until 2004, the amount the FHCF paid to insurers totaled approximately $13 million. Thus, going into the 2004 hurricane season the FHCF had accumulated over $6 billion in cash. As a result of the 2004 hurricanes, the fund

[23] s. 215.555(6)(a)1., F.S. (2005); s. 215.555(6)(b)1., F.S. (2005).
[24] s. 215.555(6)(b)1., F.S. (2005); s. 215.555(6)(b)(10), F.S. (2005).
[25] s. 215.555(6)(b)2., F.S. (2005).
[26] Testimony of a representative of the Florida Hurricane Catastrophe Fund at the Senate Banking and Insurance Meeting.

has spent or expects to spend almost $3.8 billion of its cash reimbursing insurers for hurricane losses. Going into the 2005 hurricane season, the fund's cash had decreased to $3 billion. With reimbursement to insurers for 2005 hurricane losses expected to be $3.3 billion, the fund anticipates it will start the 2006 hurricane season with no cash. Thus, it is important to note that the $6 billion it took the FHCF to accumulate over ten years was depleted in just two years.

The bill requires the fund to include and use a rapid cash buildup factor of 25% in its reimbursement premium formula used to calculate each insurer's premium to the fund. Current law allows its use but it has never been required.

Requiring a rapid cash buildup of 25% will allow the fund to collect $200 million more in premium for the 2006 contract year. This amount is in addition to the estimated $750 million the fund will collect due to normal premiums. Including a rapid cash buildup in the fund will not increase the amount of fund coverage insurers have; insurers will simply pay more in premiums due to the rapid cash buildup for the same amount of coverage.

Monies collected via a rapid cash buildup implemented in 2006 could be used to pay 2005 claims against the FHCF filed by insurers if the fund amends its administrative rule covering bonding to allow this use. According to the fund, it is currently pursuing such a rule change. The extra premium generated from a rapid cash buildup would put the fund in a better financial position in case their estimates of the claims from insurers from the 2005 hurricane season are too low. In such a case bonding may be prevented or reduced if the rapid cash buildup monies can be used to pay the 2005 claims.

According to the Task Force on Long-Term Solutions to Florida's Hurricane Insurance Market's report adopted March 6, 2006, including a 25% rapid cash buildup in the fund premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The bill also deletes language that appears to be obsolete requiring a preference in reimbursement to limited apportionment companies when the cash balance is below $2 billion. This language was in the law when the fund was designed to make payments at year end, due to each insurer's maximum share not being known until that time. Changes in 1995 established recovery limits for each insurer, which has enabled the fund to reimburse insurers almost immediately (2 to 7 days). The current language could bring into question whether the fund should reserve cash for limited apportionment companies, even if other insurers have claims owing, which could result in delaying payment or earlier or unnecessary bonding.

The bill also extends the date that medical malpractice insurers are exempt from the assessment base for FHCF emergency assessments from June 1, 2007, to June 1, 2010. The provision exempting medical malpractice insurers from the emergency assessment base was added to the law in 2004. As of 2004, medical malpractice insurers wrote approximately $860 million in premiums, translating to 3% of the FHCF assessment base.[27] Extending the exemption for these insurers means if the fund has to assess insurers to pay for revenue bonds, it will be unable to levy assessments against medical malpractice insurers. It is important to note that workers' compensation insurers are also exempt from the fund's emergency assessment base.

The bill makes a clarifying change to the definition of "losses" for fund purposes. The change clarifies the fund does not reimburse insurers for claims paid for loss of rent or loss of rental income. To date, the fund has not reimbursed those types of "losses."

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[27] Florida Office of Insurance Regulation 2005 Annual Report on Medical Malpractice Financial Information Closed Claim Database and Rate Filings dated October 1, 2005, page 14.

The bill also makes a clarifying change regarding how the FHCF capacity is adjusted. Current law allows the fund's $15 billion capacity to grow with exposure; however, the growth cannot increase more than the growth of the fund's cash balance. Under a literal interpretation of this language, the fund's cash balance could grow in a year due to bonding of the fund and thus the fund's capacity would grow too. However, under this circumstance the fund's financial picture would be troublesome as it would have to resort to bonding to obtain sufficient cash to pay claims. Thus, under that financial picture, the fund's capacity should not grow because any growth exposes insurers to more bonding potential. Due to this unintended consequence, the bill amends current law to allow the fund's capacity growth to be limited by the balance of the fund on December 31st. The balance of the fund on December 31st is required to be defined by rule and the fund currently has a rule defining how to calculate the balance of the fund on December 31st.

Hurricane Mitigation

The nature of Florida's population, housing growth, and coastal development means a substantial portion of Florida's housing stock could dramatically benefit from mitigation techniques. Any meaningful, long-term solution to the Florida hurricane insurance market should recognize the critical link between structures' wind-resistance and survivability.

The average single family home in Florida is 26 years old; however, the average age of single family homes in Broward, Miami-Dade, and Palm Beach counties is over 30 years old.[28] According to the report issued in 2005 by the Multihazard Mitigation Council of the National Institute of Building Sciences, *"Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities"*, each dollar spent on mitigation, saves society an average of four dollars.

Increasing wind-resistance of buildings on the front end (at the time of construction) or retroactively through retrofitting will deliver a return on investment by reducing damage and therefore insurance losses. Hurricane mitigation techniques may include reinforcing roof-to-wall connections, reinforcing roof systems, use of superior roof material attachment methods, placement of secondary water barrier on roof decking and protection of all openings (window, doors, garage doors and gable vents, etc.) by either installing shutter systems or using wind and impact-resistant window and/or door systems.

Mitigation is important for single family residential homes, multi-family residential homes, and mobile or manufactured homes (mobile homes). Florida has the largest number of mobile homes of any state in the nation and the highest number of mobile homes owned by the elderly, although information varies on the number and age of mobile homes in Florida.[29] The Shimberg Center estimates mobile homes represent 12% of the housing stock and house 10% of the state population.[30] The 2000 Census report estimates there are over 600,000 mobile homes in Florida, 85% of which were built before 1995.[31] According to another source, the 2000 Census counted almost 850,000 mobile homes in Florida, most of which were built before 1995.[32]

Mobile homes built before 1994 are not built in accordance with the wind standards implemented by the U.S. Housing and Urban Development agency (HUD). These wind standards were implemented due to the severe damage to mobile homes by Hurricane Andrew. HUD designates wind zones in Florida by county and requires mobile homes to be placed in a wind zone to be manufactured to standards designed for the wind zone. For example, a mobile home located in a Type III Wind Zone must be built to withstand winds of 110 miles per hour. Type III wind zones are located primarily in coastal counties along Florida's southwest and southeast coasts, south of Lake Okeechobee. HUD has designated all counties in Florida as either a Type II or Type III Wind Zone. Type II Wind Zones must contain mobile

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[28] The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 17.
[29] Id. at page 14.
[30] Id.
[31] Id. at page 18.
[32] *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005, at page 10.

homes able to withstand winds of up to 100 miles per hour. Prior to the implementation of wind zones by HUD in 1994, mobile homes were built to withstand winds of 70 miles per hour.[33]

Hurricane Mitigation Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques had been installed which reduce the amount of loss in a windstorm. These construction techniques include roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength, etc. Individual credits generally range from 3% to 25% and a fully mitigated home can qualify for total credits ranging from 20% to 42% off its wind insurance premium. Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify, often requiring some sort of certification or inspection. Insurers may allow homeowners to self-certify some features such as roof shape or number of stories, but require an engineer, building inspector, architect, or licensed building contractor to certify the more technical features such as roof deck attachment. Section 627.711, F.S., requires insurers to notify their policyholders or potential policyholders at policy issuance and renewal about the availability and range of credits or discounts for making wind mitigation improvements to their homes.

Hurricane Loss Mitigation Funding In Current Law

Section 215.559, F.S., directs the Legislature to annually appropriate at least $10 million from the FHCF, but no more than 35% of the investment income from the prior fiscal year for hurricane loss mitigation programs.[34] Actual annual legislative appropriations have ranged from the minimum $10 million to $30 million. The Hurricane Loss Mitigation Program (Mitigation Program) within the Department of Community Affairs (DCA) was created in 1999, with an annual appropriation of $10 million from the FHCF, to fund programs for improving the wind resistance of residences and mobile homes to prevent or reduce losses or reduce the costs of rebuilding after a disaster.[35] Three ($3) million from the Mitigation Program is statutorily directed to retrofitting public facilities to be used as hurricane shelters while the remaining $7 million, is appropriated for the Residential Construction Mitigation Program (RCMP) administered by DCA and statutorily allocated as follows:

- 40% ($2.8 million) is used to inspect and improve tie-downs for mobile homes.
- 10% ($700,000) is directed to the Type I Center of the State University System dedicated to hurricane research, e.g., Florida International University.
- The remainder (50% or $3.5 million) is generally directed to programs developed by the DCA with advice from an Advisory Council to help prevent or reduce losses to residences and mobile homes or to reduce the cost of rebuilding after a disaster.

One of the programs funded by the $3.5 million allocation directs grants targeting homes in the Governor's designated Front Porch communities to provide hazard mitigation upgrades to low-to-moderate income homes. Chapter 2005-264, L.O.F. passed by the Legislature last year, required DCA by the 2006-2007 fiscal year to establish a low-interest loan program for homeowners and mobile homeowners to use to retrofit their homes with hurricane mitigation measures. Prior to the enactment of this law, DCA did not have any low-interest loan programs.

Governor's Fiscal Year 2006-2007 Budget

The Governor's Fiscal Year 2006-2007 recommended budget for Florida contains various funding proposals for hurricane mitigation. These proposals are in addition to the $10 million required to be spent on mitigation pursuant to s. 215.559, F.S. The recommended budget includes $50 million to retrofit older homes to help them better withstand hurricanes. Many of the other hurricane mitigation

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[33] *See Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005, at pages 10-13; Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 1.

[34] s. 215.555(7), F.S. (2005).

[35] s. 215.559, F.S. (2005).

funding proposals cover funding for hurricane shelters, evacuation, county emergency operations centers, rebuilding for homes damaged by the 2004 and 2005 hurricanes, and affordable housing.

Mitigation Endowment Proposed By the Bill
The bill creates the Florida Hurricane Damage Prevention Endowment funded by a $100 million appropriation from the General Revenue Fund. The endowment provides no-interest loans for the purpose of hurricane damage mitigation and prevention. It distributes the loans on the following priorities:

1) single-family owner-occupied dwellings located in the areas designated as high-risk areas for purposes of Citizens Property Insurance Corporation coverage;
2) single-family owner-occupied dwellings covered by Citizens Property Insurance Corporation, wherever located;
3) single-family owner-occupied dwellings that are more than 40 years old;
4) all other single-family owner-occupied dwellings; and
5) all other residential properties.

Homeowners participating in the loan program must obtain a hurricane mitigation inspection as a condition of participating in the program. The cost of the inspection can be included in the loan amount. The no-interest loans provided under the program are only available to mitigate homestead property with an insured value of $500,000 or less.

The loan program is to be administered through lending institutions with the Department of Financial Serives (DFS) issuing requests for proposals for lending institutions that want to participate in it. The state will pay the participating financial institutions enough money to cover the interest on the loans the institutions give to homeowners participating in the program.

The endowment amount ($100 million) will be invested by the State Board of Administration (SBA) in investments that ensure the $100 million is preserved and will not decrease. Accordingly, the monies used to pay the interest on the loans will be generated through investment income of the $100 million (expected to be $5 million). It is anticipated financial institutions will be able to loan approximately $55 million under the program.

Eighty percent of the interest earned on the $100 million investment ($4 million) must be used to pay interest on the no-interest loans to homeowners. The remaining 20% ($1 million) is used for matching fund grants to local governments and nonprofits for hurricane mitigation projects.

An advisory council is created to advise the DFS regarding the endowment program.

Florida Comprehensive Hurricane Damage Mitigation Program
The bill also establishes the Florida Comprehensive Hurricane Damage Mitigation Program (program). The program must be administered by an individual with prior private sector executive experience in construction, insurance, or business. The program encompasses four aspects – hurricane mitigation inspections, hurricane mitigation grants, hurricane mitigation loans, and education and consumer awareness.

Regarding inspections, the bill requires the program to offer free hurricane mitigation inspections to single family, site-built, owner occupied property. The inspections are delivered via a request for proposal process established by the DFS. The bill providers minimum requirements for the inspection report to contain.

Regarding grants for hurricane mitigation measures, the program is required to create a process for contractors to receive reimbursement from the state for hurricane mitigation measures installed in single family, site-built, owner-occupied residential property. Matching grants are available to local governments and nonprofits for hurricane mitigation measures implemented to similar property.

Loans to homeowners for installation of hurricane mitigation measures are provided by the Florida Hurricane Damage Prevention Endowment under s. 215.558, F.S.

Regarding public education and consumer awareness, the program must implement multi-media techniques to provide Floridians with information about mitigation. It must also implement a referral program for homeowners to access the program's resources.

The bill appropriates $400 million from the General Revenue Fund to the DFS for the program in nonrecurring funds.

Citizens Property Insurance Corporation

Background

In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which combined the then existing Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens is the state's "insurer of last resort" and a property is eligible for coverage with Citizens only if there is no other offer from an authorized insurer.

Citizens operates under the direction of an 8-member Board of Governors, appointed by the Governor, Chief Financial Officer, the Senate President, and the Speaker of the House of Representatives for 3-year terms. The Chief Financial Officer also appoints a technical advisory board to provide information and advice to the Board of Governors.

Citizens offers three types of property and casualty insurance in three separate accounts:

1) Personal Lines Account (PLA) which covers homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2) Commercial Lines Account (CLA) covering condominium associations, apartment buildings and homeowners associations; and
3) High-Risk Account (HRA) which covers personal lines windstorm-only policies, commercial residential wind-only polices and commercial non-residential wind-only policies.

As of February 2006, Citizens provided coverage to 815,482 policyholders, making Citizens the second largest insurer in Florida.[36] The numbers of policyholders in the three accounts are: PLA – 445,513; CLA -- 3,167, and HRA – 366,802.[37] Currently, Citizens is averaging 30,000 – 40,000 new applications for coverage per month. At this rate, it is soon likely to become the largest insurer in Florida.

The High-Risk Account provides windstorm only coverage. Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind only" zones, private insurers may offer other peril insurance, but are not required to provide windstorm coverage. For the HRA policies in effect on January 31, 2006, Citizens reports approximately $756 million generated in premiums, representing an exposure of approximately $134 billion.[38] The premiums generated by the HRA policies account for approximately 55% of all premiums generated and represents 64% of Citizens' total exposure.

In 2004 and 2005, Citizens policyholders were impacted by all eight hurricanes hitting Florida. Citizens reports 124,674 claims have been filed for the four 2004 hurricanes and 168,377 claims for the 2005 hurricanes.[39] As of the end of February, 2006, Citizens has paid over $2.9 billion in claims for the 2004

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[36] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.
[37] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006
[38] Id.
[39] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.

hurricane season and an additional $2.6 billion in claims for the 2005 hurricane season.[40] Hurricane Wilma was especially devastating for Citizens. This hurricane accounted for over 145,000 claims. As of February 28, 2006, Citizens has paid over $1 billion in losses for Hurricane Wilma and estimates its total losses will be over $2 billion.[41]

The bill increases Citizens accounts offering property and casualty insurance from three to four. It also limits the three existing accounts (PLA, CLA, and HRA) to offering insurance only to homestead property. Homestead property includes property which currently has a homestead exemption, which qualifies for a homestead exemption but does not have one (if the policy holder obtains the exemption in a year), commercial residential property, property covered by tenant's insurance, and property covered by insurance for owner-occupied mobile homes. Commercial nonresidential property on which Citizens writes wind only and property on which no homestead exemption is claimed must get insurance coverage in Citizens' nonhomestead account. Policyholders in the nonhomestead account must certify, by affidavit at the time the policy is issued and at renewal, the property insured has been rejected for coverage by at best three authorized and three surplus lines carrier. Authorized insurers are allowed to write insurance on Citizens' nonhomestead property on an individual rate basis. In most cases, this will allow the insurer and the homeowner to negotiate a rate for homeowner's insurance. The OIR, however, is still able to review the rate to determine if it is inadequate or unfairly discriminatory.

The bill also requires Citizens to purchase reinsurance on the nonhomestead account to cover a 250-year probable maximum loss event. Under current law, Citizens must use its "best efforts" to purchase reinsurance for a 100-year probable maximum loss. Citizens purchased reinsurance for the 2005 hurricane season for its' HRA and PLA accounts. For the HRA, for $20 million, it purchased $282 million in season-long coverage after $775 million in losses; for the PLA, for almost $29 million it purchased $175 million in season-long coverage after $225 million in losses.[42] Citizens' expects to collect recoveries from private reinsurance on the HRA ($35 million recovery) and PLA ($41 million recovery). These recoveries will be offset against the amount of 2005 deficits in each account.

The bill requires properties in the nonhomestead account insured at $250,000 or more to have at least 5% hurricane deductible.

Under current law, private market insurers can only adjust Citizens' wind-only policies on a voluntary basis if the insurer writes the other perils policy for the Citizens policyholder. The bill requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy.

Depopulation and Take-Out Bonuses

Since 1995, Florida law has expressed the Legislature's intent to provide a variety of financial incentives to encourage the replacement of the highest possible number of policies written in the state's residual market with policies written by admitted insurers at approved rates.[43] There is specific authority for Citizens, as there was for the RPCJUA, to pay a "take-out bonus" to insurers of up to $100 for each policy removed from Citizens, under certain conditions. However, Citizens, like the RPCJUA before it, has implemented greater bonuses under conditions approved by its board and the OIR, based on a broader grant of authority to adopt programs and incentives for the reduction of both new and renewal writings found in s. 627.351(6)(g)3., F.S.

Citizens adopted a new depopulation program in December 2005. This program has non-bonus and bonus components in it. Only policies taken out with wind coverage are eligible for a bonus. Take-out companies must assume a minimum number of policies or a minimum total insured value of the take-

[40] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.
[41] Personal communication from a representative at Citizens on file with the Insurance Committee.
[42] Citizens Property Insurance Corporation Board of Governor's Report to the Florida Legislature dated February 1, 2006, page 12.
[43] *See* s. 627.3511(1), F.S. (2005); s. 10, ch. 95-276, L.O.F.

out policies under either the bonus or non-bonus component. Policies must be taken out for three or five years in order to be eligible for a bonus. Base bonus amounts range from 5% to 12.5% for dwelling policies; however, some policies are not eligible for bonuses. Base bonuses for condo unit/tenant contents and mobile home policies have different ranges. Take-out companies can receive an additional bonus amount for assuming a greater number of policies or for taking a policy out for 5 years. The additional bonus amounts range from 0% to 10%, depending on the number of bonus eligible policies or the total insured value of policies taken out.

Citizens reports that in 2004, four insurance companies removed more than 158,416 policies from Citizens, including 145,959 in the PLA and 12,457 in the High Risk Account. In 2005, 293,684 policies were removed from Citizens (75,556 from the HRA and 218,128 from the PLA).[44] According to Citizens, take-out companies predict 150,000 – 300,000 policies will be taken out of Citizens in 2006.[45] Additionally, Citizens believes the take-out program has had substantial impact in keeping PLA policies from growing more than they have and in stabilizing the number of HRA policies.[46]

It has been questioned whether the take-out bonuses provide a cost-effective method for reducing Citizens' potential liability. On the one hand, payment of cash bonuses to insurers reduces Citizens' surplus to pay claims and may be a windfall to an insurer willing to take out a policy at its approved rate without the bonus. On the other hand, a take-out bonus may be viewed as a form of "reinsurance" that transfers 100% of liability for a policy for the 3-year period that a take-out insurer must continue to renew the policy, and reduces potential assessments on the entire market.

In its operational audit of Citizens, the Auditor General found the bonus amount paid or escrowed for each policy taken out of Citizens averaged $148, although Citizens had several takeout programs paying take-out bonuses of $300 per policy. The Auditor General also recommended Citizens seek legislative clarification of its authority to pay bonuses in excess of $100 per policy as provided in s. 627.3511(2), F.S., In response to the Auditor General's recommendation, the Board of Citizens requested the Legislature to clarify their authority to develop takeout bonus programs providing more than $100 per policy.[47]

The bill provides legislative clarification regarding the amount per policy Citizens can pay as a takeout bonus. The bill limits the bonus amount to $100 per policy in accordance with s. 627.3511(2), F.S., The bill also provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of private insurers participating in Citizens' depopulation.

Rates

In order to assure that Citizens rates are not competitive with the voluntary market, the current law requires that Citizens rates for its PLA be actuarially sound and that its average rates for each county must be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers (5 insurers for mobile home coverage) with the greatest direct written premium in the state for that line of business.[48]

For its HRA (wind-only policies in coastal areas), the law more generally requires that Citizens rates be actuarially sound and not be competitive with approved rates charged by authorized insurers. However, the law further requires Citizens and the OIR to jointly develop a wind-only ratemaking methodology to meet this purpose, for rates effective on or after July 1, 2004.[49] A wind-only rate methodology was

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[44] Personal communication with a representative of Citizens on file with the Insurance Committee.

[45] Id. at page 3.

[46] Minutes from the Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market meeting December 14, 2005; The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, pages 41-42.

[47] Id. at page 13.

[48] s. 627.351(6)(d)2., F.S. (2005).

[49] s. 627.351(6)(d)3., F.S. (2005).

developed that uses a variation of the "Top 20" approach mandated for personal residential multi-peril policies.

In 2005, Citizens made two rate filings, each seeking an increase in rates. One filing was based on the Top 20 approach; the other filing was based on actuarially soundness. Neither filing has been approved by the OIR yet. The Citizens' Top 20 rate filing (filed with OIR on November 29, 2005) results in a statewide average premium rate increase of 16% for Citizens' HRA policyholders and a 15% increase for its PLA policyholders.[50]

The Citizens' actuarial rate analysis filing results in a statewide average premium rate increase of 17% for the PLA and 45% for the HRA. The combination of the Top 20 rate filing and the actuarial rate filing results in a statewide average premium increase of 35.5% for PLA policyholders and 68.4% for HRA policyholders.[51]

The bill requires Citizens to charge a rate in its three homestead accounts to cover a 100-year probable maximum loss event using premiums, FHCF reinsurance, and investment income only. Citizens is prohibited from using income from assessments, bonding, state revenues, or long-term debt in its rate calculation.

For the nonhomestead account, Citizens must charge a rate to cover a 250-year probable maximum loss event using only the same assets described above. In addition, authorized insurers willing to provide insurance to property in the nonhomestead account can do so on a consent to rate basis without the policies insured counting against their maximum percentage of consent to rate policies.

The bill also requires Citizens to include a residual market risk load in their rates. This factor will allow Citizens to develop a capital base similar to that required of insurers in the voluntary market and should, over time, reduce the need for and frequency of assessments. The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market adopted this recommendation in its report of March 6, 2006.

The bill provides for automatic approval of an insurer's rate request for the wind portion of a policy in Citizen's HRA if the rate requested is lower than Citizens' approved rate for a similar risk. However the OIR retains the authority to disapprove such a rate request if it finds the request is inadequate or unfairly discriminatory.

Deficits

Generally, if Citizens does not have adequate funds to pay claims in any of its three accounts (i.e. a deficit), it may levy regular assessments for each such account against property insurers, including surplus lines insurers, up to 10% of each insurer's net written premium from the prior year for subject lines of business.[52] The entire regular assessment is levied against property insurers, who may recoup such amounts from their policyholders in subsequent rate filings. Currently, Citizens' assessment base has about $8.3 billion in premium, so a one-time regular assessment would generate about $830 million.[53]

An insurer must pay the company's regular assessment within 30 days of receipt of notification from Citizens. If the regular assessment is not sufficient to cover the deficit, Citizens may issue revenue bonds funded by multi-year emergency assessments collected by insurers as premium surcharges on

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[50] Meeting minutes from Citizens' Board of Governors meeting on December 15, 2005.

[51] Id.

[52] Subject lines of business that are subject to Citizens' deficit assessment include insurance for: fire, industrial fire, allied lines, farm owners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and includes liability coverage on all such insurance except for inland marine and certain vehicle insurance other than the insurance on mobile homes used as permanent dwellings.

[53] Personal communication with representatives from Citizens on November 29, 2005.

all property insurance policyholders in the state, generally limited to 10% of premium, or 10% of the deficit, whichever is greater.

However, "limited apportionment companies" (and their policyholders) are exempt from a substantial portion of a regular assessment. These are insurers with a surplus of $25 million or less, and writing 25 percent or more of their total countrywide property insurance premiums in Florida. These insurers are exempt from regular assessments for any amount of the deficit in excess of $50 million. However, if a deficit is great enough to require multi-year emergency assessments in order to fund bonds, the policyholders of limited apportionment companies are subject to emergency assessments at the same amount as other property insurance policyholders.

After imposing a regular assessment on insurers, Citizens is required to impose a "market equalization surcharge" on its own policyholders equal to the same percentage or premium assessment that is imposed on property insurers. This is intended to keep the Citizens' rates from being non-competitive, but also acts to increase revenue to Citizens above the amount of the deficit, which is fully funded by the regular assessment (if the deficit is equal to or less than 10% of premium). In other words, Citizens collects money from Florida homeowners in an amount sufficient to cover its deficit and then collects an additional amount from its policyholders.

Prior to the 2004 hurricane season, Citizens had a surplus of about $1.1 billion for its High Risk Account and $700 million for the PLA/CLA combined. Citizens' claims losses related to the 2004 hurricane season amounted to more than $2.4 billion, depleting its entire surplus in the High Risk Account. Thus, Citizens incurred a $516 million deficit in the HRA. The other two accounts (PLA and CLA) did not incur deficits.

The $516 million deficit translates into statewide average 6.8% assessment on all non-Citizens insured homeowners in Florida. However, Citizens policyholders will also pay a 6.8% assessment, a "market equalization surcharge," upon renewal of their policy.

Historically, joint underwriting authorities have used an assessment mechanism to fund deficits.[54] Florida's assessment mechanism for the property and casualty joint underwriting authority has been in place since the mid 1970s. The following chart outlines the assessments made by the property and casualty joint underwriting authority since 1970:

Year	Account	Principal Storm(s)	Assessment Amount
1975	HRA	Hurricane Eloise	$ 5.0 million
1985	HRA	Hurricane Elena	$ 3.2 million
1992	HRA	Hurricane Andrew	$ 16.2 million
1993	HRA	Winter Storm	$ 3.2 million
1994	PLA	Non-hurricane	$ 17.7 million
1995	HRA	Hurricane Opal	$ 84 million
1995	PLA	Hurricane Opal	$ 22.8 million
1998	HRA	Hurricane George and Tropical Storm Mitch	$100 million

Source: Citizens Property Insurance Corporation (August 25, 2005)

Although all of the assessments outlined above were levied before the creation of Citizens, they were levied by the predecessor "insurer of last resort" for property and casualty insurance (i.e. the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) or the Florida Windstorm Underwriting Association (FWUA)).

Due to the 2004 losses and deficit, Citizens started the 2005 hurricane season with no surplus in the HRA. Because this account sustained losses again in 2005 as a result of the 2005 hurricanes, as well

[54] *See* s. 617.3512, F.S. (2005); s. 627.311(5)(d), F.S. (2005) (relating to the Florida Workers' Compensation Joint Underwriting Association); s. 627.351(4)(e), F.S. (2005) (relating to the Medical Malpractice Joint Underwriting Association)

as worsening loss development for the 2004 hurricanes (which are booked to the 2005 financial statements) Citizens incurred a deficit for the second year in a row. Although Citizens does not yet have its formal, certified amount of its 2005 deficit, it estimates the deficit in the High Risk Account will be $1.7 billion.[55] This amount includes $590 million in worsening loss development for claims from 2004. Citizens started the 2005 hurricane season with an estimated $162 million surplus in the PLA and $25.7 million surplus in the CLA.[56] For 2005, Citizens estimates a deficit of $82 million in the PLA and a deficit of $4 million in the CLA.[57] These deficits are expected to result in a regular assessment of about 11 percent of premium (the full 10 percent for the HRA and about 1 percent for the PLA/CLA), plus an 8 percent emergency assessment.[58] The 11 percent regular assessment would be billed at one time and, presumably, passed on to policyholders in rate filings by insurers. The 8 percent emergency assessment could be spread out over a period of years, depending on the terms of the financing approved by the board.

The bill requires Citizens to collect deficits in the three homestead accounts and the one nonhomestead account differently. The bill requires Citizens to divide any deficit among all property insurers, including their policyholders in the three homestead accounts. This will ensure Citizens does not collect more for their deficit than the deficit amount (i.e. cannot collect monies through deficit assessments to reserve as surplus). In order to charge Citizens' homestead policyholders their share of the deficit, Citizens will levy a surcharge (a "Citizens policyholder surcharge") in the same amount of the assessment passed on by the insurers to their homeowners.

If there is a deficit in the nonhomestead account, its policyholders must be assessed an amount sufficient to defray the deficit. The deficit cannot be paid by policyholders in the three Citizens homestead accounts or property insurers in the private market. In other words, a Citizens' deficit created by losses to nonhomestead property will not be passed on to Florida homeowners or Citizens' homestead property owners. Furthermore, any Citizens' policyholders in the nonhomestead account that does not pay its assessment cannot obtain insurance from surplus lines or authorized insurers.

The bill appropriates $920 million to fund a portion of Citizens' 2005 deficit which would have resulted in levying regular assessments on homeowners. The bill also requires any emergency assessment to be amortized over a 10-year period.

Changes to Coverage Limits of Citizens

$1 Million Coverage Prohibition

Although not specified by statute, Citizens currently has a maximum policy limit of $1 million for homeowner policies issued in its PLA. This prohibition has been in effect for at least ten years. This account also limits coverage to $100,000 for mobile homes, $200,000 for condominium units, and $100,00 for tenants policies. However, there is no corresponding upper limit for residential (wind-only) policies issued the HRA. In February, Citizens reported that it had 6,431 residential policies in force that were insured for values greater than $1 million, with a total insured value of $16.7 billion with a total premium of $64.3 million. Additionally, a representative of Citizens reported that as of December 12, 2005, it had 5,280 HRA residential policies with dwelling coverage in excess of $1 million and that the total inforce premium was $64,238,090, resulting in an average premium of $12,166.

The bill prohibits homes with insured values of $1 million or more and condominium unit owner policies with combined dwelling and contents coverage of $1 million or more from obtaining coverage in Citizens. Citizens estimates restricting eligibility for coverage to homes with insured values of $1 million or more will reduce their probable maximum loss (PML) in the HRA by $809 million which

[55] Personal communication from a representative of Citizens on file with the Insurance Committee.
[56] Personal communication from a representative of Citizens on file with the Insurance Committee.
[57] Personal communication from a representative of Citizens on file with the Insurance Committee.

[58] Personal communication from a representative of Citizens on file with the Insurance Committee; presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.

equates to 12.5%. Additionally, this restriction will reduce Citizens' residential exposure by $16.7 billion or 14%.[59] The largest single residential insured property Citizens covers in the HRA has a total insured value of $25.5 million.

Citizens had also reported in February of this year that the 100-year PML for the HRA was $7.8 billion as of December 31, 2005. However, Citizens reported new PML estimates in March that shows the 100-year PML of the HRA is now $10.3 billion.

One property insurance option for homeowners with properties insured for $1 million or more is to obtain property coverage from the surplus lines insurers. The percentage of homeowners' insurance written by surplus lines insurers from 2002 – 2004 was 4% for each year. In other words, the admitted insurers wrote 96% of the homeowners' insurance written in Florida for those years. In 2004, 179,180 homeowners' policies were written in the surplus lines market.[60] Of these, 153,117 or 85% provided wind coverage and 26,068 excluded wind coverage. These included 5,690 policies with coverage limits in excess of $1 million, of which 3,980 provided wind coverage and 1,710 excluded wind coverage. Prior to the 2005 hurricane season, the Florida Surplus Lines Service Office reported that there is capacity and interest in the surplus lines market in writing high-value dwellings; however, the surplus lines market conditions can change rapidly. In addition, windstorm deductibles for surplus lines' policies are typically 5% or 10% and sinkhole coverage is typically excluded.

As of December 14, 2005, the surplus lines insurers issued 134,000 homeowners' policies in Florida in 2005, down from 179,180 policies in 2004.

In conjunction with the prohibition against Citizens' covering properties insured at $1 million or more, the bill allows authorized insurers in the private voluntary market to insure these properties on an individual rate basis; however, the OIR can still review such rate to determine if the rate is inadequate or unfairly discriminatory. This is another property insurance option for homeowners with properties insured for $1 million or more. Having property insured in the admitted market, rather than the surplus lines market, offers policyholders the protection of the guaranty association to pay any claims (up to the association's limit) in the event the insurer becomes insolvent. This protection is not afforded to policyholders obtaining insurance in the surplus lines market.

Insurance agents are given access to claims and underwriting information kept by Citizens for policies ineligible for Citizens due to the $1 million restriction, in order to try to find coverage for the properties in the private market. The bill provides a procedure for agents to obtain such information and a procedure for policyholders to request that Citizens keep their information confidential.

Issuance of Restrictive Coverage Policies

Section 627.351(6)(c)1., F.S., requires Citizens to adopt five different policy forms – standard personal lines policies with comprehensive multi-peril coverage, basic personal lines policies meeting the requirements of the secondary mortgage market, commercial lines policies with full coverage, personal and commercial residential wind-only policies, and commercial nonresidential wind-only policies.

The bill allows Citizens to adopt variations of the five policy forms that offer more restrictive coverages than the five policy forms listed above.

Ethical Considerations

Part III of ch. 112, establishes the code of ethics for public officers and employees, which mandates that employees comply with financial disclosure and reporting requirements. Each year, public officers and specified employees are required to submit a financial disclosure to the Commission on Ethics. Noncompliance with these provisions may result in civil penalties and forfeiture of public retirement benefits. [s. 112.317, F.S.]

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[59] Personal communication received from Citizens on February 13, 2006, on file with the Insurance Committee.

[60] Final Report and Recommendations of the Joint Select Committee on Hurricane Insurance, February 25, 2005, page 14.

Chapter 2005-111, L.O.F., directed the Auditor General to conduct an audit of Citizens. On December 7, 2005, the Auditor General released an operational audit (report number 2006-096) of Citizens, which included findings in the areas of administration, policy eligibility determination and depopulation, customer service, claims handling, actuarial soundness of rates, and financing options. The report included the following recommendations related to the administration of Citizens:

- No documentation was available to show that Citizens had conducted an enterprise-wide evaluation of the effectiveness of operational and financial controls.
- The statutes governing Citizens do not require the OIR to conduct background investigations of Citizens' management and officers, which are required for voluntary insurers.
- Additional steps should be taken to strengthen the standards of conduct.
- Citizens had not implemented a comprehensive written procurement of policies and procedures.

Citizens operates subject to the supervision and oversight of the Board of Governors and pursuant to a plan of operation approved by order of the OIR. Because Citizens is not considered a state agency, state law governing ethics for state employees is not applicable to Citizens' employees or board of directors.

On October 20, 2005, the Citizens' Board of Directors adopted proposed amendments to the Citizens' plan of operation relating to ethical standards and disclosure requirements for officers and board members of Citizens. Upon adoption by the board, the proposed amendments were sent to the OIR for approval and inclusion in the Citizens' plan of operation. The OIR approved the amendments on November 30, 2005. The standards and requirements adopted are similar to those governing state employees. The standards and requirements:

- Prohibit the Executive Director, Senior Managers of Citizens or any Board member from personally representing another person or entity before the Board or Corporation for a period of two years following their departure;
- Subject the Executive Director and Senior Managers of Citizens to the background investigation provisions prescribed by the Office of Insurance Regulation for officers of insurers;
- Require the Executive Director and Senior Managers of Citizens to file financial disclosure information in a format substantially similar to that required of state employees under Section 112.3144, F.S.;
- Require vendors to disclose any relationship, financial or otherwise, with employees or Board members; and
- Require the Executive Director to immediately report to the Chairman of the Board any breach of ethics policy regarding an employee or Board member and to report any such breach which may constitute criminal activity to the Division of Insurance Fraud within 48 hours of discovery.

The bill requires all members of the Citizens' Board and any employee with managerial, policy making, or professional duties to comply with the Code of Ethics applicable to state government employees.

Wind-Only Coverage Zones

Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind-only" zones, private insurers may offer other peril coverage, but are not required to provide windstorm coverage.

Beginning February 1, 2007, if Citizens' 100 year probable maximum loss (PML) in its wind-only zones is not reduced by 25% from what it was in February 2001, the wind-only zones must reduce by an amount that allows Citizens to reduce its PML by 25%.[61] It does not appear Citizens will be able to reduce its 100 year PML by 25% by February 1, 2007, in accordance with this statute. One reason is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons.

[61] s. 627.351(6)(o), F.S. (2005).

The bill extends the time period for Citizens to reduce its 100 year PML in the wind-only zones from February 1, 2007, to February 1, 2013. Therefore, insurers writing the other peril/non-wind coverage will not face the choice of either dropping that coverage or writing the windstorm coverage for policies.

A similar provision relating to Citizens' reduction of its 100 year PML by February 1, 2012, by 50% or risk having the area eligible in the HRA to reduce to a smaller area is affected by the bill. This provision is extended to February 1, 2018.

The bill creates the High Risk Eligibility Panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. It requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones.

Hurricane Loss Models

In 1995, the Legislature established the Florida Commission (Commission) on Hurricane Loss Projection Methodology to serve as an independent body within the State Board of Administration.[62] The Commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. The membership of the Commission is designed to equip it with expertise in fulfilling its mission. The members include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System, appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by the OIR, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management of DCA. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission standards. The Commission uses a staff of five experts made up of a meteorologist, an engineer, an actuary, a statistician, and a computer scientist known as the "Professional Team" to conduct on-site reviews of proprietary models and to report back to the Commission as to their conclusions.

There are currently four private hurricane loss models that have been determined by the Commission to meet its standards and found acceptable. The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review.

The bill limits the OIR and the Insurance Consumer Advocate from questioning specified aspects about the hurricane models an insurer uses to justify its rate filing if the Commission has reviewed the hurricane model used and found it to be accurate or reliable. It also allows the insurer to use a hurricane model to justify its rate filing only if the OIR and Insurance Consumer Advocate are given a reasonable opportunity to review all the basic assumptions and factors used in developing the model results. Under current law, the OIR and Insurance Consumer Advocate must have access to, rather than a reasonable opportunity to review, the assumptions and factors.

Public Hurricane Loss Model

In 2000, the state authorized and initially funded the development of a public hurricane loss projection model.[63] The model is required to be designed in accordance with the standards set by the Florida Commission on Hurricane Loss Projection Methodology (Commission). The Department of Insurance (the predecessor to the DFS) contracted with the International Hurricane Research Center at Florida

[62] s. 627.0628, F.S.

[63] Chapter 2000-166, L.O.F., 2000-01 General Appropriations Act, Specific Appropriation 2226, page 331.

International University for the development of the public hurricane model. The model has been developed, has been tested, and has been released for use. It has not, however, been reviewed by the Commission. Thus, it has not been found by the Commission to be accurate and reliable.

The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review. However, legislative changes in 2005 provided that the findings are admissible and relevant only if OIR and the consumer advocate appointed by the Department of Financial Services have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding. A separate public records bill was also enacted to provide a public records exemption for a trade secret, as defined in s. 812.081, F.S., that is used in designing and constructing a hurricane loss model, that is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (Commission), OIR, or the consumer advocate.

The bill restricts OIR from using the public hurricane model in rate filings until the model is found by the Commission to be accurate or reliable. Current law (s. 627.0628(3)(c), F.S.) restricts an insurer from using a private hurricane loss model in its rate filing unless the Commission finds the model accurate and reliable.

Rate Modernization

Background

Florida is considered by some as having a restrictive system of rate regulation for property and casualty insurance (including homeowners' insurance, liability insurance, and motor vehicle insurance). In general, with respect to file-and-use submissions, insurers are not able to implement rate changes until their rate filing is approved by the regulator (formerly the Department of Insurance, currently the OIR of the Financial Services Commission).

While the option known as "use and file," under which an insurer may implement a rate change and then file it with the regulator, is available under relevant statutes, the option does not reduce the insurer's regulatory burden. Under use and file, the insurer is required to refund to policyholders any portion of a rate increase that is subsequently disapproved by the regulator. Under Florida law, the insurance company has the burden of proving that its proposed rate is not excessive, inadequate, or unfairly discriminatory.

More specifically, Florida's insurance laws require insurers (including homeowners' insurance, liability insurance, and motor vehicle insurance) to file property and casualty insurance rates for approval with the OIR either 90 days before the proposed effective date, or 30 days after the rate filing is implemented. Under the latter option, known as "use and file," the OIR may order the insurer to refund that portion of the rate determined to be excessive.

If the OIR disapproves a rate filing, in most cases, a property and casualty insurer may either request an administrative hearing under the Administrative Procedures Act (APA) (Chapter 120, F.S.), or seek binding arbitration.

Rating Territories

Property and casualty insurers establish rating territories for which a territorial rating factor will apply to increase, decrease, or leave unchanged, the base rate charged by the insurer. The insurer must demonstrate to the OIR that the application of the territorial rating factors will not result in a rate that is unfairly discriminatory, so that the factor bears a reasonable relationship to the expected loss and expense experience amount that is associated with various risks within that territory. Each insurer is permitted to establish its own territories, based on these standards. Generally, OIR does not require an insurer to justify its territorial rating factors in each rate filing, but will periodically require an insurer to do so.

Flex Rating

Flex rating allows an insurer to vary their rates up or down from a rate approved by the regulator without obtaining approval by the regulator for the rate change; however, the rate variance must be within a specified range from the approved rate. Flex rating has been implemented in a number of states.

South Carolina implemented flex rating in 1999 for auto insurance due to a significant decline in the number of insurers writing motor vehicle insurance in the voluntary market causing an increase in auto owners insured in the residual market. Under South Carolina's flex rating, annual increases or decreases of 7% or less are deemed approved unless the regulator issues an order with findings specifying in detail why the rate filing violates statutory standards.[64] After South Carolina implemented flex rating for auto, insurers returned to the market and rates decreased.[65] South Carolina included fire, allied lines, and homeowners insurance in its 7% flex rating law on July 29, 2004.[66]

Louisiana allows flex rating for all lines of insurance where the rate variation is a 10% increase or decrease from the insurer's rate in effect. Pennsylvania allows flex rating for all lines except motor vehicle involving rate decreases of 10% or more and small commercial risks with rate variations of 10% or less. Texas allows flex rating for private passenger automobile insurance. New York allows it for designated commercial lines.[67] In 2004, Rhode Island implemented a 5% flex rating for personal lines insurance.[68]

The National Conference of Insurance Legislator's (NCOIL) adopted a model law regarding flex rating in 2004. The model law establishes a 12% flex band on overall statewide rate increases or decreases within which an insurer can file rate changes on an expedited basis during any 12-motnh period. The flex rating under the model law applies to personal lines insurance. The model law allows a Commissioner of Insurance to disprove a flex rating if the Commissioner finds the rating is inadequate or unfairly discriminatory.[69]

The bill implements flex rating as of January 1, 2007, for use in residential property insurance. Insurers will be allowed to implement rate changes of a 5% increase or decrease average statewide or 10% increase or decrease per rating territory without obtaining the OIR's approval that the rate is excessive or unfairly discriminatory. Insurers can only increase or decrease rates by these amounts once per year. The OIR maintains authority to disapprove a rate change as inadequate or for use of unfairly discriminatory rating factors. In order for the OIR to operate under this authority, the bill requires insurers changing their rates in accordance with the flex rating allowance to submit the proposed rate change to the OIR at least 30 days prior to the effective date of the rate change. The OIR then has 30 days to determine whether to disapprove the rate change based on inadequate or use of unfairly discriminatory grounds. The rate change is automatically approved if the OIR does not make a finding on these grounds within the 30-day window.

In order to provide safeguards for rate decreases allowed by flex rating, during the OIR's 30-day review period, the bill requires the OIR to suspend a rate decrease if it finds the decrease will result in inadequate premiums or solvency problems.

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[64] *Rates and Regulation*, March 2006, available at http://www.iii.org/media/hottopics/insurance/ratereg/, (last viewed March 12, 2006).

[65] NCOILetter, February 2004.

[66] See Bulletin No. 2004-09 Issued by the South Carolina Department of Insurance on August 18, 2004, available at https://www.doi.sc.gov/Eng/Public/bulletins/Bulletin2004-09.pdf (last viewed March 7, 2006).

[67] *Rates and Regulation*, March 2006, available at http://www.iii.org/media/hottopics/insurance/ratereg/, viewed March 12, 2006.

[68] Newsbriefs, Insurance Journal, July 19, 2004, available at http://www.insurancejournal.com/magazines/east/2004/07/19/newsbriefs, viewed March 12, 2006.

[69] *Property/Casualty Flex-Rating Regulatory Improvement Model Act*, National Conference of Insurance Legislators, Adopted February 27, 2004.

The bill requires the OIR to furnish the Legislature with an annual report regarding the impact of flexible rate regulation on competition in the insurance market.

Surplus Lines Insurers

Surplus lines insurance refers to a high risk category for which there is no market available through standard insurance carriers. Typical categories of this nature are homeowners' insurance in hurricane-prone regions, commercial aircraft, and some sea vessels. Additionally, there are some types of specialized risks that general lines policies cannot cover. For example, special events, such as concerts or major sports exhibitions, may not be eligible for coverage by licensed general lines insurers.

Under current law, surplus lines insurance is governed by ss. 626.913 through 626.938, F.S. When insurance coverage is not available among licensed general lines insurers, the insurers may seek coverage in the surplus lines market. The law requires the general lines agent to make a diligent effort to procure the desired coverage from authorized agents. A diligent effort is defined by law to mean seeking and being denied coverage from at least three authorized agents. Surplus lines insurers also are regulated by the state, but to a lesser degree than general lines insurers.

The Florida Surplus Lines Service Office (the office) is created by s. 626.921, F.S., as a nonprofit association overseen by a Board of Governors comprised of nine members. Seven of the nine board members must be affiliated with the surplus lines industry. The office is directed to oversee the surplus lines industry in Florida and to provide protection of the general public with respect to the placement of surplus lines policies. The office is authorized by law to collect fees from licensed surplus lines agents, based upon the premiums collected, in order to pay the administrative and other costs associated with the office.

Under current law, in general surplus lines agents may not place any coverage with any unauthorized insurer which is not an eligible surplus lines insurer.[70] An unauthorized insurer cannot become a surplus lines insurer unless the statutory conditions specified in s. 626.918(2), F.S., are met. One of the conditions is the insurer must have and maintain surplus of at least $15 million.[71] Another condition is the insurer must have and maintain a trust fund in the U.S. of at least $5.4 million. The purpose of the trust fund is to provide additional protection to the insurer's U.S. policyholders. The statute further provides what type of funds can be used to satisfy the surplus and trust fund requirements.

In addition to the types of funds which can be used by alien surplus lines insurers to satisfy the surplus and trust fund requirements, the bill adds the use irrevocable, unconditional, and evergreen letters of credit issued by a qualified U.S. financial institution to be used to fund the $5.4 million trust fund which serves to protect all policyholders. The bill also defines the term "qualified U.S. financial institution" to mean U.S. banks that are members of the Federal Reserve system.

Law and Ordinance Coverage

Under current law, insurers must offer coverage in homeowners policies for the additional costs necessary to meet applicable building codes (often referred to as "law and ordinance" coverage) that provides 25% and 50% of the dwelling limits. Pursuant to s. 627.7011(2), F.S., a homeowners' insurance policy automatically includes law and ordinance coverage unless the insurer obtains the policyholder's written refusal of such. However, because both 25% and 50% law and ordinance is required to be offered to the policyholder, it is unclear which percentage of coverage is automatically included in a homeowners' policy if the policyholder does not refuse law and ordinance coverage in writing.

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[70] s. 626.918 (1), F.S. (2005).
[71] s. 626.918(2)(d)1., F.S. (2005).

To clarify any uncertainty regarding which percentage of coverage is automatically included in such circumstances, the bill specifies that 25% law and ordinance coverage (rather than 50%) is the automatically included amount if the policyholder does not refuse law and ordinance coverage in writing. This clarification was recommended in the OIR's Law and Ordinance Coverage Report submitted to the Legislature in January 2006.

Replacement Costs Coverage

Currently, polices that provide replacement cost coverage provide payment of the replacement costs, without depreciating the payment for the depreciated value of the property, regardless of whether the policyholder replaces the property or submits receipts for the repair or replacement of property. This provision applies to the insured dwelling and personal property covered by the insurance policy.

By removing the allowance for payment of replacement costs for personal property, the bill allows only losses sustained to insured dwellings to be paid at replacement costs (without taking into account depreciation). Thus, losses to personal property that is insured under a homeowners' policy will be paid for after depreciation of the personal property is taken into account and the property is replaced.

The bill clarifies an insurer retains the ability to determine whether damage can be repaired or replaced.

Electronic Payment of Claims

Pursuant to s. 627.4035(3)(b), F.S., insurers are allowed to pay claims by electronic means (e.g. debit card) if authorized in writing by the recipient/policyholder or the recipient's representative and if any fees or costs associated with the electronic payment and charged against the recipient are disclosed in writing at the time the recipient gives written authorization for the insurer to pay the claim by electronic means. This provision is especially helpful and useful in ensuring policyholders receive prompt payment of insurance proceeds after a disaster when they are displaced from their homes and may not have access to a financial institution to cash or deposit a check. After disasters, often times, mail delivery is interrupted and payment by electronic means is the most efficient way to make certain the policyholder receives the insurance proceeds.

The bill adds language to the existing law regarding payment of claims by electronic means to allow insurers to waive the requirement that written authorization from the policyholder is required in order for the insured to pay insurance claims electronically as long as there is no fee for the electronic payment and the insurer verifies the identity of the recipient of the insurance proceeds (the policyholder). Furthermore, the new language requires the insurer to be liable for payment of the proceeds if the payment is misdirected.

In at least one emergency order issued by OIR to insurers as a result of hurricanes hitting Florida, OIR has authorized insurers to pay claims electronically with the safeguards outlined in the bill.[72] However, OIR has only authorized such payment for additional living expenses and personal property contents claims. The bill does not limit electronic payment to only these claims; rather, it allows electronic payment for all types of insurance claims.

OIR Rulemaking in Natural Disaster Situations

In response to each hurricane during the 2004 and 2005 hurricane season, the Commissioner of the OIR issued emergency orders. The orders covered such topics as:

- Requiring state health insurance companies and HMOs to temporarily suspend their regulations regarding prescription refills to allow prescriptions to be refilled early.
- Restricting cancellation or non-renewals of homeowners' insurance policies in specified areas for a specified time or for the whole state for a specified time with certain exceptions.

[72] *See* Case No. 83836-05-EO relating to Hurricane Wilma.

- Restricting cancellation of all insurance policies for the whole state for a specified time with certain exceptions.
- Requiring all property and casualty insurers to do reporting to the OIR.
- Requiring all property and casualty insurers to file copies of contracts between public adjusters and the policyholder with the OIR and of current fee schedules with independent adjusting firms.
- Requiring the reporting to the OIR of violations of the OIR's rules or the insurance statute and unlicensed activity.
- Prohibiting insurers from instituting rate hikes without approval from the OIR.
- Requiring insurers to follow property mediation rules adopted by emergency rule by DFS.
- Requiring insurers to toll premiums due on insurance policies for a specified time.
- Establishing timelines for initial damage assessments, processing and settlement of personal lines residential property claims, and reporting of compliance or non-compliance with the timeline.
- Requiring insurers to extend personal and commercial residential insurance coverage for a specified time after the damaged dwelling is repaired and is insurable.

The OIR issued at least five emergency orders due to the 2004 hurricanes and at least six emergency orders due to the 2005 hurricanes. Many of the orders contained similar, if not exact, provisions.

When the emergency orders were issued, any party adversely affected by the order was given notice of his or her right to seek review of it at the Division of Administrative Hearings pursuant to s. 120.68, F.S., (under the Florida Administrative Procedures Act) and at the District Court of Appeal pursuant to Rule 9.110 of the Florida Rules of Appellate Procedure.

The bill requires the Financial Services Commission (the Governor and Cabinet) to adopt standard rules for insurers to abide by following a hurricane or other natural disaster. The standard rules are limited to the following areas: claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellation and non-renewals of insurance policies.

The bill requires the OIR to issue an order within 72 hours after a hurricane or natural disaster to specify what line of insurance the standard rules apply to, the geographic areas of the state the standard rules apply to, and the time period the standard rules are in place. The bill prohibits the Financial Services Commission or the OIR from adopting emergency rules that conflict with the standard rules.

The bill also provides the Commissioner of the Office of Insurance Regulation with power to enact emergency rules during a state of emergency.

Insurer Solvency

Background on Insurer Solvency Issues

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the OIR. The state's Chief Financial Officer (CFO) heads the DFS while the head of the OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, the OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. The regulation and licensure of insurance agents and agencies is the purview of the DFS. Staff of the DFS also provides consumer information and assistance through the Division of Consumer Services. When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation (the Division) of the DFS intervenes to protect the affected insurer's policyholders.

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file

for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the Division of the Department of Financial Services.

By law, a delinquency proceeding is initiated by the Division against any insurer believed to be insolvent or experiencing an impairment of its capital reserves or surplus. A delinquency proceeding may include liquidation, rehabilitation, reorganization, or conservancy. Staff of the Division indicates that rehabilitation and liquidation are the two most common delinquency proceedings. By law, the Division files all delinquency proceedings in the Circuit Court in Leon County.

Only one insurer became insolvent as a result of the 2004 and 2005 hurricane season.

Insurance Guaranty Funds: General Information

In addition to the consumer protections afforded by the Division, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for 6 months or 1 year, and which is still owed on the unexpired portion of the policy.

Florida's guaranty associations are comprised of insurer representatives. Insurers are required by law to participate in guaranty associations as a condition for transacting business in the state. Monies available through a guaranty association for claims settlement and premium refunds are paid by insurers as a percentage of their total collected premiums. The percentage of premiums payable to a guaranty association is determined by law, although nationally it typically ranges from 1-3 percent. In many cases, a guaranty association also is authorized by law to assess an additional amount if an emergency arises and the association lacks sufficient funds to pay outstanding claims and to refund unearned premiums. This means, in essence, that insurers licensed to transact insurance in a state assess or tax their respective premium income streams to pay the outstanding claims and unearned premiums of an insolvent insurer.

Most states, including Florida, have more than one insurance guaranty association. Each association is assigned by law to pay outstanding claims and unearned premium, up to limits specified by law, for specific lines of insurance. In Florida, there are four guaranty associations created in chapter 631, F.S. The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of workers' compensation insurance. The fourth guaranty association is the Florida Insurance Guaranty Association (FIGA); it is responsible for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

The Florida Insurance Guaranty Association (FIGA)

Provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. The board of directors for FIGA is directed by law to be comprised of at least five, and no more than nine members; members serve on the FIGA board for a 4-year term.

The law directs FIGA to pay any eligible claim of more than $100 and less than $300,000, less any applicable deductible, with a few specified exceptions (s. 631.57, F.S.). Funds available to FIGA are the result of an annual assessment of up to 2% of each specified insurer's net direct written premiums for the previous year. There have been no assessment to FIGA members since 2002. Other monies that

accrue to FIGA include receivership payments from the DFS and from the agencies that liquidate the estates of insolvent insurers in other states.

The law creates three accounts under FIGA:
- auto liability account;
- auto physical damage account; and
- an account for all other included insurance lines (the all-other account).

The last FIGA assessments occurred in 2002. According to documents provided by FIGA, in December 2002, member insurers writing policies covered by the auto liability account were assessed 1.125% of their net direct premiums collected in 2001. Similarly, FIGA made an assessment for the auto physical damage account in 2002, as well, although that assessment was for .75%. There was no assessment in 2002 for the all-other account. According to FIGA, it has assessed the maximum of 2% only once in the past 11 years. The maximum assessment was levied in 1993, only for the all-other account, after more than six insurers were declared insolvent in the first several months following Hurricane Andrew. The law, at s. 631.56(2)(d), F.S., prohibits the use of any state funds by FIGA to settle claims and return unearned premiums.

The law authorizes insurers to include the cost of their annual FIGA assessment in their rate schedule. This means an insurer may recoup its assessment through increasing its policy rates, subject to OIR approval. Generally, however, a guaranty association assessment is one of many factors an insurer considers in setting its rates.

Local Government Revenue Bonds
Article VII of the Florida Constitution governs finance and taxation by the state and its political subdivisions. In that article, the state and its political subdivisions, including municipalities and counties, are authorized to issue bonds. In most cases, bonds issued either by a city or a county are tax exempt; the tax-exempt status generally makes bonds issued by governmental entities an attractive investment instrument.

FIGA as Bond Guarantor after Hurricane Andrew
On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of Homestead. Rather, the Legislature authorized FIGA to charge its members a special 2% assessment in addition to the regular assessment of up to 2%. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead. Beginning in 1993, FIGA members were assessed the full 2% regular assessment. That same year, and for the following 3 years—through 1996—the full 2% special assessment also was collected from FIGA members. Only in 1993 did FIGA impose both 2% assessments. By 2000, FIGA had sufficient funds to defease (i.e. "pay off") the Homestead bonds, although those funds were reserved to make the regular annual payments until the bonds expired in 2003.

Changes Made By the Bill
Under the bill, FIGA is authorized to contract with a city or county, or a combination of cities, counties, or cities and counties to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2% in addition to

the regular FIGA assessment of up to 2%. The guaranty association is authorized to charge the emergency assessment for the life of the bonds. The bill also raises the limit FIGA may pay on a covered claim that is a homeowners' insurance claim from $300,000 to $500,000.

The bill eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding.

The powers and duties of FIGA are outlined in s. 631.57, F.S. The bill amends that law to authorize FIGA to enter into a contract with a municipality or a county, or a combination of the two, for the issuance of tax-exempt revenue bonds. Bond proceeds will be used by the city or county for hurricane recovery, although the proceeds are not required to be used exclusively within the boundaries of the issuing city or county. This means that the bond proceeds may be used by FIGA to settle unpaid claims or to refund unearned premiums to citizens of the state affected by the hurricane, even if the claimant's residence is not in the city or county that issues the bonds. Bonds may be issued by any local government substantially affected by a category 1 or stronger hurricane.

The bill authorizes FIGA to impose an emergency assessment of up to 2% for bond payments; the emergency assessment is in addition to the regular FIGA assessment of up to 2% . As with the FIGA regular assessment, the emergency assessment will be based upon an insurer's direct written premiums in the previous year, after the insurer makes any refunds. The bill specifically applies the emergency assessment only for bond payments and costs associated with their issuance. The FIGA board of directors may require the emergency assessment to be paid in a single payment or in 12 monthly installments.

The bill requires FIGA to file a report annually with the Senate President, the Speaker of the House, and the Chief Financial Officer (CFO). The report must specify the amount of bond proceeds used each year, the number of claims settled, and analyze the amount of emergency assessment needed to retire the bonds as promised. The bill specifies that the emergency assessment is not a premium and thus, is not subject to the premium tax, the payment of commissions, or other fees.

Insurers are required by the bill to report their emergency assessments as part of the reports they file with the OIR related to setting rates. This reporting is intended to ensure that each insurer charges premiums sufficient to satisfy its reserve requirements and to meet the other liquidity requirements in law.

The bill includes several pages of legislative findings relating to the potential damage to the state if hurricane damage is not addressed and repaired quickly, especially if insurers become insolvent due to hurricane claims. The findings acknowledge the personal hardship to persons and families who suffer losses during a hurricane and the need for claims to be settled expeditiously. Otherwise, the findings realize that great damage can occur to the economy and the citizens of the state. The findings also recognize the success of the FIGA bonds issued in 1993 and their potential for future use. The legislative findings likely will be used as part of the supporting documents that accompany any future bond issue for hurricane recovery.

The bill authorizes several uses for bonds issued for hurricane recovery. Among the authorized uses is the payment of covered claims of an insolvent insurer; to refinance or replace previous borrowings; to fund reserves for the bonds; to pay expenses incident to bond issuance; and other similar enumerated purposes. The state promises not to take any action that could endanger the availability of funds to repay the bonds.

Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes

As noted previously, there is no consensus as to the number of mobile/manufactured homes in Florida. Reports based on the same 2000 Census data place the number at over 600,000 and over 850,000. However, there is consensus that the majority of Florida's mobile and manufactured homes were built prior to 1995.

In 1974, Congress designated the U.S. Department of Housing and Urban Development (HUD) to set standards for the construction of mobile homes. On June 15, 1976, new country-wide regulations were implemented and HUD took full control over the manufacture of mobile homes. Mobile homes were constructed to the same standards nationwide until 1994 when HUD implemented changes in response to damage from Hurricane Andrew. The changes implemented three wind zones, with HUD specifying the wind zones for all areas of the United States. The changes also required mobile homes to be manufactured for each wind zone and restricted mobile home dealers from selling a mobile home to a customer that is not designed for the wind zone area where the customer intends to install the home.[73]

In 1996, the Department of Highway Safety and Motor Vehicles (DHSMV) began regulating the installation of mobile homes in Florida. Florida implemented more stringent tie-down standards, by rule, in 1999.[74] Florida's mobile home installation program is generally considered a model for the United States.[75]

DHSMV's assessment of mobile home damage after the 2004 hurricanes showed homes constructed after 1994 (in accordance with the enhanced construction requirements by HUD) withstood hurricane force winds and remained intact with minor to no damage. Homes installed pursuant to the more stringent tie-down standards remained on their foundation with no movement. Although DHSMV found some destroyed mobile homes in their assessment, many of the destroyed homes were installed prior to the enhanced tie-down standards being implemented.[76] DHSMV found similar results in its assessment of mobile home damage due to Hurricane Wilma.[77]

Many in the mobile home industry have commented on the lack of homeowners' insurance for these homes in the private market and Citizens' policy numbers support this problem. As indicated previously, Citizens' mobile home policies in the PLA jumped from 12,028 in October 2003 to 62,029 in October 2005 (a 2-year period) and the number of such policies in the HRA jumped from 12,552 to 14,056 for the same time period.[78] Also, although new insurers are entering the market and are writing hurricane insurance for mobile homes, they are restricting their coverage to post-1994 mobile homes.[79] Additionally, a number of insurers historically writing hurricane insurance for mobile homes have revised their underwriting guidelines to exclude older mobile homes.[80]

The bill creates a ten-member Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes. The task force is to study issues relating to hurricane mitigation and hurricane insurance for mobile and manufactured homes. OIR is to provide administrative support. The

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[73] *See* Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 1; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

[74] *See* Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 2; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

[75] Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 2.

[76] Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004, at page iv.

[77] Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page iii.

[78] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 28.

[79] Id. at page 35.

[80] Id. at page 28.

Task Force is to receive substantive staff support from the Governor's office, the DFS, the OIR, the DHSMV, and the DCA. The bill provides appointment of Task Force members by the Governor, the Chief Financial Officer, the President of Senate, and the Speaker of House of Representatives. The Task Force includes the Commissioner of OIR, the Executive Director of Citizens, and the CEO of Federal Alliance for Safe Homes as members.

The bill requires the Task Force to make recommendations to the Legislature regarding the creation and maintenance of insurance capacity for mobile and manufactured homes and the effectiveness of hurricane mitigation measures for such homes. It requires the Task Force to gather information on specific subjects, including number, age, size, and location of mobile and manufactured homes in Florida, the extent of hurricane mitigation measures prevent or lessen damage to such homes, and the extent to which insurance discounts for mitigated mobile or manufactured homes would increase insurance capacity for such homes. The Task Force must issue a report to the Legislature of their findings by January 1, 2007.

Report on Insurability of Attached or Free Standing Structures to Homes

The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market (Task Force) received testimony and information suggesting effective mitigation measures for carports, pool enclosures, and other attached structures may not exist, particularly those attached to mobile homes.[81] The Task Force recommended conducting an analysis to determine whether mobile homes with attached structures are insurable risks and whether or not they should be insured by the admitted market. Importantly, add-ons to mobile homes are not subject to the HUD mobile home construction standards. Rather, the Florida Building Code and local ordinances govern their construction.[82]

Furthermore, an investigation by the *Palm Beach Post* indicated insurers incurred significant losses from Hurricane Wilma due to pool enclosures that did not withstand hurricane force winds during the 2004 and 2005 hurricane seasons.[83]

The bill requires the OIR to submit a report to the Legislature by January 1, 2007, regarding the insurability of attached or free standing structures to residential, mobile or manufactured homes; the increase or decrease in insurance costs associated with insuring such structures; the feasibility of insuring such structures; whether mitigation to such structures can reduce loss; and the impact on homeowners of not having such structures insured. In writing the report, the OIR is required to work with the DHSMV, the DCA, the Florida Building Commission, the Florida Home Builders Association, representatives of the property and casualty insurance industry and representatives of the mobile and manufactured home industry.

Hurricane Deductible Buy-Down Program

The bill requires the OIR to submit a report to the Legislature by January 1, 2007, regarding requiring insurers to provide an opportunity for policyholders to decrease the amount of their hurricane deductible as long as the policyholder implements hurricane mitigation measures.

C. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

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[81] Id. at page 28.

[82] Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004, at page iv.

[83] http://www.palmbeachpost.com/storm/content/storm/reports/2005/screens/ (last viewed March 12, 2006).

Section 2: Creates s. 215.558, F.S., relating to The Florida Hurricane Damage Prevention Endowment.

Section 3: Creates s. 215.5586, F.S., relating to the Florida Comprehensive Damage Mitigation Program.

Section 4: Creates s. 252.63, F.S., relating to the Commissioner of Insurance Regulation; powers in a state of emergency.

Section 5: Amends s. 626.918, F.S., relating to eligible surplus lines insurers.

Section 6: Amends s 627.062, F.S., relating to rate standards.

Section 7: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 8: Amends s. 627.06281, F.S., relating to public hurricane loss projection model; reporting of data by insurers.

Section 9: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 10: Amends s. 627.4035, F.S., relating to cash payment of premiums; claims.

Section 11: Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Section 12: Creates s. 627.7019, F.S., relating to standardization of requirements applicable to insurers after natural disasters.

Section 13: Amends s. 627.727, F.S., to correct a cross-reference.

Section 14: Amends s. 631.181, F.S., relating to filing and proof of claim.

Section 15: Amends s. 631.54, F.S., relating to definitions.

Section 16: Amends s. 631.55, F.S., to correct a cross reference.

Section 17: Amends s. 631.57, F.S., relating to powers and duties of the association.

Section 18: Creates s. 631.695, F.S., relating to revenue bond issuance through counties or municipalities.

Section 19: States that no provision in ss. 631.57 and 631.695, F.S., may be repealed until all bonds issued under the laws are paid in full.

Section 20: Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

Section 21: Creates the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.

Section 22: Requires OIR to submit a report on the insurability of attached or free standing structures to homes.

Section 23: Requires OIR to submit a report on implementation of hurricane deductible buy-downs.

Section 24: Appropriates $100 million from the General Revenue Fund to the DFS for the Florida Hurricane Damage Prevention Endowment, as a nonrecurring appropriation for the purposes specified in s. 215.558, F.S. Appropriates $400 million from the General Revenue Fund to the Department of Financial Services, as a nonrecurring appropriation for the purposes specified in s. 215.5586, F.S.

Section 25: Appropriates $920 million from non-recurring General Revenue for transfer to Citizens Property Insurance Corporation.

Section 26: Appropriates $675,000 from trust funds to the Office of Insurance Regulation.

Section 27: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Including a 25% rapid cash buildup in the FHCF premium is estimated to add an additional $200 million to the FHCF.

2. Expenditures:

   The bill appropriates $500 million from the General Revenue Fund for the endowment and damage mitigation programs. The bill also appropriates $920 million from the General Revenue Fund to cover the regular assessments for the 2005 Citizens' deficit accounts. The bill appropriates $675,000 from the Insurance Regulatory Trust Fund to OIR to fund costs associated with the bill.

	FY 2006-07	FY 2007-08	FY 2008-09
Department of Financial Services:			
General Revenue Fund:			
Non-recurring:			
Transfer to the Florida Hurricane Damage Prevention Trust Fund for the Florida Hurricane Damage Prevention Endowment	$100,000,000	$ 0	$ 0
Transfer to the Florida Hurricane Damage Prevention Trust Fund	400,000,000	0	0
Transfer to Citizens Property Insurance Corporation	920,000,000	0	0
Total Non Recurring GR	$1,420,000,000	0	0
Florida Hurricane Damage Prevention Trust Fund:			
Non-recurring:			
Special Category – FL Comprehensive Hurricane Damage Mitigation Program	400,000,000	0	0

Recurring:			
Special Category-Financial Incentives For Hurricane Damage Prevention	5,000,000	5,000,000	5,000,000
Total – FL Hurricane Damage Prevention Trust Fund	405,000,000	5,000,000	5,000,000
Office of Insurance Regulation			
Contractual Services			
Non-Recurring	425,000	0	0
Recurring	250,000	250,000	250,000
Total – Insurance Regulatory Trust Fund	675,000	250,000	250,000
Total Appropriations:			
General Revenue Fund	1,450,000	0	0
Florida Hurricane Damage Prevention Trust Fund	405,000,000	5,000,000	5,000,000
Insurance Regulatory Trust Fund	675,000	250,000	250,000

See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments are eligible to receive matching grant money for hurricane mitigation programs through the endowment program and for installation of hurricane mitigation measures through the Florida Comprehensive Hurricane Damage Mitigation Program.

Cities and counties are authorized by the bill to issue tax-exempt revenue bonds for hurricane recovery. The bonds will be repaid by FIGA using an emergency assessment of up to 2 percent on the total premiums of insurers who are members of FIGA.

Bond proceeds may be used by a city or county substantially affected by a category 1 or stronger hurricane for rebuilding and repair of damaged structures. The proceeds will be available to a citizen whose insurer becomes insolvent following a hurricane; bond monies will settle the valid claims of insolvent insurers and refund unearned premiums to affected policyholders.

2. Expenditures:

A city or county that issues revenue bonds under the bill is not required to repay the bonds from its own revenues. Rather, FIGA is authorized to charge its members an emergency assessment of up to 2 percent annually, for the life of the bonds. Expenses associated with issuing the bonds will be paid from bond proceeds. This means the costs to a city or county that issues the bonds should be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Including a 25% rapid cash buildup in the FHCF premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The adoption of a residual market risk load in Citizens' rates will likely increase their premiums; however, over time, it should reduce the likelihood of assessments on all homeowners.

Allowing private insurers to use an individual rate to write homeowners' insurance for dwellings insured at over $1 million and condominium unit owners' contents policies insured for over $1 million may increase surplus for insurers; however, the insurers also assume the risk for these high dollar policies.

Homeowners with homes insured for over $1 million or with condominium unit contents insured for over $1 million may have an increase in homeowners' premiums because they are required by the bill to get homeowners' insurance from surplus lines insurers or from voluntary market insurers under an individual rate.

If a surplus lines insurer or authorized insurer decides to write a Citizen's nonhomestead policy, the policyholder's rates could increase above what would be charged by the Citizens nonhomestead rate. However, this provision may encourage surplus lines and authorized insurers to write policies for Citizens' policyholders thus reducing Citizens' exposure.

Excluding homes insured for over $1 million or with condominium unit contents insured for over $1 million should decrease the amount and likelihood of a future assessment against Florida homeowners and Citizens' policyholders as the exclusion will reduce Citizens' exposure.

If Citizens incurs a deficit in the future, the assessment against Florida homeowners will be less than under current law because the bill requires Citizens to spread the deficit assessment over Florida homeowners and its homestead policyholders.

Citizens' policyholders who choose to buy policies with coverages more restrictive than a standard homeowner's policy may have a lower premium; however, they will also have less coverage in case of loss.

Restricting Citizens' take-out bonuses to $100/policy will enable Citizens to save money. More money means either Citizens will not incur a deficit or any deficit incurred will be reduced by the amount of the additional money, leading to less assessments.

Restricting Citizens' take-out bonuses to $100/policy may reduce the number of policies taken out, thus maintaining Citizens' exposure.

Requiring Citizens to set rates in the nonhomestead account for a 250-year PML is likely to raise rates for these property owners.

Requiring Citizens to purchase reinsurance for a 250 year PML for the nonhomestead account may eliminate or reduce any future deficit in that account, thus eliminating or reducing any assessment among the account policyholders. However, Citizens' surplus will be reduced by the cost of the reinsurance.

Requiring properties insured by Citizens for $250,000 or more to have a 5% hurricane deductible may increase the deductible for policyholders because under current law, these policyholders may have a lower deductible. An increased deductible means more out-of-pocket costs to the policyholder if there is a loss.

The adoption of flex rating for property insurance may result in rate increases; however, any increase is limited to 10% statewide or 15% per rating territory per year. Additionally, flex rating may encourage insurers to increase rates in small increments rather than waiting and filling a large rate increase. Thus, homeowners will not incur large rate increases at one time; they may be spread out over a year's

period. Additionally, because insurers will not have to do a full rate filing to charge a rate under the flex rating allowance, insurers will save administrative expenses associated with rate filings.

Specified homeowners are eligible to receive free hurricane inspections for their homes under the Florida Comprehensive Hurricane Damage Mitigation Program. They are also eligible to receive grant money to install hurricane mitigation measures through the program. No interest loans for installation of hurricane mitigation measures are available to the homeowners through the endowment program.

Removing the requirement that insurers must pay replacement costs for personal property will decrease insurance proceeds to policyholders if there is a loss related to their insured personal property because depreciation will be taken into account. This may reduce premiums as an insurer's exposure will be reduced.

The bill ensures that FIGA will have funds sufficient to pay the valid claims and unearned premium of any insurer who becomes insolvent following a hurricane that hits Florida. This assurance should enable the economies of communities affected by a category 1 or stronger hurricane to recover quickly and efficiently.

Insurers who are members of FIGA will be required to pay an emergency assessment of up to 2 percent of their respective premiums for the previous year to repay the bonds. Based upon the outstanding insurance policies in Florida for 2003, a 2 percent assessment on FIGA members would cost insurers an estimated $188 million.

Increasing the FIGA limit for homeowner's claims from $300,000 to $500,000 will allow some homeowners to obtain an additional $200,000 from FIGA if their homeowner's insurer goes insolvent.

D. FISCAL COMMENTS:

Florida Hurricane Damage Prevention Endowment

The bill has a non-recurring appropriation of $100 million from the General Revenue Fund for the Florida Hurricane Damage Prevention Endowment that will be invested, rather then spent; it will be used to generate an income stream of approximately $5 million a year that will be used to pay lending institutions for interest on loans they make to homeowners for implementation of mitigation measures. The General Revenue funding is transferred to the Florida Hurricane Damage Prevention Trust Fund and subsequently transferred to the State Board of Administration for investment. The bill provides appropriations from the trust fund to provide interest payment on loans.

Florida Comprehensive Hurricane Damage Mitigation Program

An additional non-recurring appropriation of $400 million from the General Revenue Fund to the DFS is provided to fund the inspections, grants, no-interest loans and public education and consumer awareness. The General Revenue funding is transferred to the Florida Hurricane Damage Prevention Trust Fund for specific program expenditures as authorized.

Office of Insurance Regulation

Impact: Section 6

Annual Reporting Requirement Estimate: $250,000 annually

Specify the impact of flexible rate regulation under paragraph (2)(j) on the degree of competition in insurance markets in this state -- year-by-year comparison of the number of companies participating in the market for each class of insurance and the relative rate levels, including – 1) the number of rate filings made under paragraph (2)(j), the rate levels under those filings, and the market share affected by those filings; 2) the number of filings made on a file and use basis, the rate levels under those filings, and the market share affected by those filings; 3) The number of filings made on a use and file basis, the rate levels under those filings, and the market share affected by those filings; 4) recommendations to promote competition in the insurance market and further protect insurance consumers.

Rationale:

- In order for the Office to make recommendations promoting competition and protecting insurance consumers, the Office will need a recurring appropriation of $250,000 to perform the comprehensive analysis and study, each year, as defined in the proposed committee bill;
- The cost is estimated based upon the Office hiring an outside consultant to perform the study. Cost estimate based on comparison with the $300,000 paid to Florida State University to perform a comprehensive sinkhole study in 2005.

Impact: Section 21 Task Force
Panel and Administrative Support Impact $100,000

Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes. — (9 Members); To make recommendations relating to the creation and maintenance of insurance capacity sufficient to ensure that all mobile and manufactured home owners in this state are able to obtain appropriate insurance coverage; evaluate the effectiveness of hurricane mitigation measures for mobile or manufactured homes; Report to Governor, CFO, President of the Senate and Speaker of the House.

Rationale:
Contract with vendor for administration of Task Force; expense of meeting 2 times each month for 4 months. This cost is based upon a previous external contract with an external vendor to coordinate the Long Term Hurricane Solutions Task Force in FY 2005-2006.

Impact: Section 22 Report Directive
Report Production/Consultant Services $150,000

Report on the insurability of attached or free standing structure to residential homes, mobile or manufactured homes – such as carports, pool enclosures –

- Increase or decrease in insurance costs; feasibility of insuring such structures; impact to homeowners of not having coverage for such structures; ability of mitigation measures to reduce risk and loss;
- Must consult with DHSMV, DCA, Florida Home Builders Associations, representatives of mobile and manufactured home industry, insurers, and any other party OIR determines appropriate

Rationale:
The Office will need to hire external contractors/actuaries to produce results from engineering consultants, consultants from additional state agencies, industry representatives, and conduct loss cost surveys.

Impact: Section 23 Report Directive
Report Production/Consultant Services $175,000

Report of findings and recommendations on requiring residential property insurers to provide an opportunity for policyholders to decrease the monetary amount of a hurricane deductible predicated upon the policyholder demonstrating certifiable and verifiable mitigation measures that reduce hurricane damage; address the feasibility of requiring mitigation certification and the specific procedures necessary for implementation and include suggested legislation; and include other related information as the office determines is appropriate for the Legislature to consider.

Rationale:
OIR must, by directive, consult with consumers, insurers, builders, wind certification inspectors, organizations dedicated to promoting disaster safety and property loss mitigation, counties, municipalities, and state agencies as well as any other entity that the office determines could provide relevant information.
OIR will need to hire an outside consultant/actuary to complete the required study.

- The estimate is based upon the Office's last two actuarial studies: a) Medical Malpractice Presumed (Rating) Factor - $191,550 and b) Florida Health Insurance Plan - $150,000.

Comments on other fiscal issues:

FIGA

The costs to FIGA for implementing the bill should be minimal. Any costs incurred for preparing and offering the revenue bonds authorized by the bill will be paid from the bond proceeds.

Citizens

The number of nonhomestead properties in Florida that will be insured by Citizens and thus subject to higher rates is indeterminate. The number of properties currently in Florida that would be considered nonhomestead by the bill's provisions is also indeterminate.

Although Citizens could not estimate the impact on rates creating a homestead account with a 100 year PML and a nonhomestead account with a 250 year PML or its cost to purchase reinsurance for a 250 year PML for the nonhomestead account, the following information was provided by Citizens' on their current account structure:

Personal Lines Account

	Probable Maximum Loss	Estimated Cost of Reinsurance	Indicated Rate Change (HO3)*	Filed Actuarial Rate Change (HO3)	Difference in Rates
1 in 50 year event	$1.3 billion	$107-$119 million	6.1% **	21.3%	-15.2%
1 in 100 year event	$2.2 billion	$180-$207 million	19.5%	21.3%	-1.8%
1 in 250 year	$3.7 billion	$267-$310 million	36.1%	21.3%	14.8%

High Risk Account (Personal Residential Portion)

	Probable Maximum Loss	Estimated Cost of Reinsurance	Indicated Rate Change*	Filed Actuarial Rate Change	Difference in Rates
1 in 50 year event	$6.4 billion	$677-$755 million	62.1%***	45.2%	16.9%
1 in 100 year event	$10.3 billion	$.992-$1.1 billion	103.2%	45.2%	58.0%
1 in 250 year event	$17.0 billion	$1.36-$1.57 billion	155.2%	45.2%	110.0%

NOTE: *Estimates are based on current exposures in the PLA and the HRA (personal residential only).*

* Increase in rates necessary to cover costs of proposed reinsurance.

** Rate indication does not include the Note Financing Factor that would be needed to procure pre-event financing to the 1 in 100 year PML.

*** Rate indication does not include the 15% Catastrophe Financing that would be needed to procure pre-event financing to the 1 in 100 year PML.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the DCA rule-making authority to adopt rules governing the wind certification and wind mitigation inspection program.

The bill gives the Financial Services Commission (FSC) rulemaking authority to adopt rules setting forth the standard rules insurers must follow regarding claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellations and non-renewals. The bill also requires the FSC to begin rulemaking by June 1, 2006.

The bill provides the DFS with rulemaking authority to adopt rules to implement the Florida Comprehensive Hurricane Damage Mitigation Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Insurance Committee considered the bill, adopted 22 amendments, and reported the bill favorably. The amendments made technical and substantive changes to the bill. The substantive changes made:

- allows agents to get claims and underwriting information for policies ineligible for Citizens due to the $1 million restriction in order to try to find coverage for the properties in the private market and provides a procedure for receipt of the information and a procedure for the policyholder to request Citizens to maintain the confidentiality of the information;

- adds and amends a provision in the laws governing FIGA. Eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding;

- requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy;

- provides for automatic approval of an insurer's rate request for the wind portion of a policy if the rate requested is lower than Citizens' approved rate;

- provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of insurers for depopulation activities;

- creates a panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. Requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones;

- allows an insurer in the private market to issue a homeowner's policy on nonhomestead property eligible for Citizens on an individual rate basis. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory;

- allows an insurer in the private market to issue a homeowner's policy on an individual rate basis on homes insured for $1 million or more and thus ineligible for coverage in Citizens. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory;

- removes the repeal of the Panhandle exemption in the building code;

- provides the Commissioner of the OIR with power to enact emergency rules during a state of emergency;

- clarifies the increase in the FIGA limit on claims from $300,000 to $500,000 only applies to homeowners' insurance claims and defines "homeowner's insurance" for use under the FIGA statute;

- clarifies an insurer retains the ability to determine whether damage can be repaired or replaced;

- decreases rate flexibility for property insurers from a statewide average of 10 percent increase or decrease to 5 percent; and

- decreases rate flexibility for property insurers in a single territory from 15 percent to 10 percent.

On April 17, 2006, the Fiscal Council considered the bill, adopted 6 amendments, and reported the bill favorably. The amendments included the following changes:

- Changes the program administrator of the mitigation program from the Department of Community Affairs to the Department of Financial Services.

- Establishes the Florida Comprehensive Hurricane Damage Mitigation Program with in the Department of Financial Services; Provides inspections, grants, no-interest loans, and public education and consumer awareness.

- Expands the financial instruments of Citizens Property Insurance Corporation that are exempt for documentary stamp tax.

- Appropriates $100 million from General Revenue for an endowment to fund the no-interest mitigation loan program; Provides a trust fund appropriation to make interest payments.

- Appropriates $400 million from General Revenue for the Florida Comprehensive Hurricane Damage Mitigation Program; Provides for the transfer to the trust fund and appropriates program costs from the trust fund; Appropriates $675,00 from the Insurance Regulation Trust Fund to the office of Insurance Regulation.

- Appropriates $920 million from General Revenue for transfer to the Citizens Property Insurance Corporation to cover a portion of the 2005 deficit accounts; Provides that any emergency assessments be amortized over a 10-year period.

- Deletes provisions to limit coverage on mobile or manufacture homes built prior to 1994.

The staff analysis was updated to reflect the adoption of the amendments.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to property and casualty insurance; amending s. 215.555, F.S.; revising a definition; revising certain reimbursement contract criteria; revising certain reimbursement premium requirements; revising certain revenue bond emergency assessment requirements; creating s. 215.558, F.S.; creating the Florida Hurricane Damage Prevention Endowment; providing a purpose and legislative intent; providing definitions; providing requirements and authority for investment of endowment assets by the State Board of Administration; requiring a report to the Legislature; providing for payment of the board's investment services' costs and fees from the endowment; providing requirements of the Department of Financial Services in providing financial incentives for residential hurricane damage prevention activities; providing for an interest-free loan program; providing program criteria and requirements; creating an advisory council for certain purposes; providing for appointment of members; requiring

members to serve without compensation; providing for per diem and travel expenses; creating s. 215.5586, F.S.; establishing the Florida Comprehensive Hurricane Damage Mitigation Program within the Department of Financial Services; providing qualifications for the program administrator; providing program components; requiring the department to adopt rules; requiring the department to adopt rules; creating s. 252.63, F.S.; providing purpose and intent; providing powers of the Commissioner of Insurance Regulation during a state of emergency; providing a purpose and intent; authorizing the commissioner to issue certain orders in a state of emergency; providing for effect and duration of such orders; providing for legislative termination of such orders; requiring the commissioner to publish such orders and an explanatory statement; amending s. 626.918, F.S.; authorizing certain letters of credit to fund an insurer's required policyholder protection trust fund; providing a definition; amending s. 627.062, F.S.; specifying certain rate filings as not subject to office determination as excessive or unfairly discriminatory; providing limitations; providing a definition; prohibiting certain rate filings under certain circumstances; preserving the office's authority to disapprove certain rate filings under certain circumstances; providing procedures for insurers submitting certain rate filings; specifying nonapplication to certain types of insurance; specifying approval of certain rate filings under certain

circumstances; providing an exception; requiring the office to provide annual reports on the impact of certain rate regulations; specifying report requirements; amending s. 627.0628, F.S.; prohibiting certain office or consumer advocate questions of certain models reviewed by the commission; amending s. 627.06281, F.S.; prohibiting the office from using certain hurricane loss projection models under certain circumstances; amending s. 627.351, F.S., relating to the Citizens Property Insurance Corporation; providing additional legislative intent; specifying application to homestead property; specifying the existing three separate accounts of the corporation as providing coverage only for homestead property; providing a definition; providing for an additional separate account for nonhomestead property; requiring separate maintenance of revenues, assets, liabilities, losses, and expenses attributable to the nonhomestead account; providing authority and requirements for coverage rates for nonhomestead properties; providing for office review of such rates or rating plans for being inadequate or unfairly discriminatory; authorizing the office to order discontinuance of certain policies under certain circumstances; requiring insurers to maintain certain records; providing for reducing regular assessments by the Citizen policyholder surcharge under certain circumstances; providing for deficit assessments against nonhomestead account policyholders under certain circumstances; authorizing the board of governors of the

corporation to make loans from the homestead accounts to the nonhomestead account under certain circumstances; specifying ineligibility of certain nonhomestead account policyholders for certain coverage under certain circumstances; revising the requirements of the plan of operation of the corporation; requiring additional procedures for determining eligibility of a risk for coverage; providing for determination of regular assessments to which the Citizen policyholder surcharge applies; specifying a minimum requirement for a hurricane deductible for certain property; specifying contents of required statements in applications for nonhomestead and homestead account coverage; requiring the corporation to purchase certain catastrophe reinsurance; providing additional legislative intent relating to rate adequacy in the residual market; deleting provisions relating to a rate methodology panel appointed by the corporation; providing requirements and limitations for a corporation adopted bonus payment program; providing a criterion for calculating reduction or increase in probable maximum loss; delaying application of certain high-risk area boundary reduction provisions; providing for application of provisions relating to homestead and nonhomestead accounts to certain policies; requiring certain corporation employees to comply with certain ethics code requirements; requiring corporation employees to notify the Division of Insurance Fraud of probable commissions of fraud by corporation employees; requiring the corporation

to report on the feasibility of requiring authorized insurers to issue and service specified policies of the corporation; specifying report requirements; providing immunity to producing agents and employees for specified actions taken relating to removal of policies from the corporation; providing a limitation; providing legislative intent; creating a High Risk Eligibility Panel; providing for appointment of panel members and member's terms; providing for administration of the panel by the corporation; prohibiting compensation and per diem and travel expenses; providing an exception; requiring the panel to report annually to the Legislature on the certain areas that should be included in the Citizens Property Insurance Corporation high risk account; specifying factors to be considered by the panel; providing duties of the office; authorizing the office to conduct public hearings; requiring the panel to conduct an analysis of property eligible for the high-risk account in specified areas; requiring the panel to submit a report to the office and corporation; providing requirements of the report; amending s. 627.4035, F.S.; providing for a waiver of a written authorization requirement to pay claims by debit card or other electronic transfer; providing construction relating to limiting the liability of an insurer for certain replacement costs; amending s. 627.7011, F.S.; limiting certain law and ordinance coverage; deleting application to personal property; requiring insurers to issue separate checks for certain

expenses and requiring certain checks to be issued directly to a policyholder; creating s. 627.7019, F.S.; requiring the Financial Services Commission to adopt rules imposing standardized requirements applicable to insurers after certain natural events; providing criteria; providing requirements of the Office of Insurance Regulation; prohibiting certain conflicting emergency rules; amending s. 627.727, F.S.; correcting a cross-reference; amending s. 631.181, F.S.; providing an exception to certain requirements for a signed statement for certain claims; providing requirements; amending s. 631.54, F.S.; defining the term "homeowner's insurance"; amending s. 631.55, F.S.; correcting a cross-reference; amending s. 631.57, F.S.; revising requirements and limitations for obligations of the Florida Insurance Guaranty Association for covered claims; authorizing the association to contract with counties, municipalities, and legal entities to issue revenue bonds for certain purposes; authorizing the Office of Insurance Regulation to levy assessments and emergency assessments on insurers under certain circumstances for certain bond repayment purposes; providing requirements for and limitations on such assessments; providing for payment, collection, and distribution of such assessments; requiring insurers to include an analysis of revenues from such assessments in a required report; providing rate filing requirements for insurers relating to such assessments; providing for continuing annual assessments under certain circumstances;

specifying emergency assessments as not premium and not subject to certain taxes, fees, or commissions; specifying insurer liability for emergency assessments; providing an exception; creating s. 631.695, F.S.; providing legislative findings and purposes; providing for issuance of revenue bonds through counties and municipalities to fund assistance programs for paying covered claims for hurricane damage; providing procedures, requirements, and limitations for counties, municipalities, and the Florida Insurance Guaranty Association, Inc., relating to issuance and validation of such bonds; prohibiting pledging the funds, credit, property, and taxing power of the state, counties, and municipalities for payment of bonds; specifying authorized uses of bond proceeds; limiting the term of bonds; specifying a state covenant to protect bondholders from adverse actions relating to such bonds; specifying exemptions for bonds, notes, and other obligations of counties and municipalities from certain taxes or assessments on property and revenues; authorizing counties and municipalities to create a legal entity to exercise certain powers; requiring the association to issue an annual report on the status of certain uses of bond proceeds; providing report requirements; requiring the association to provide a copy of the report to the Legislature and Chief Financial Officer; prohibiting repeal of certain provisions relating to certain bonds under certain circumstances; amending s. 817.234, F.S.; providing an additional circumstance that constitutes

committing insurance fraud; creating the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes; providing for administration by the office; specifying additional agency administrative staff; providing for appointment of task force members; requiring members to serve without compensation; providing for per diem and travel expenses; providing purpose and intent; requiring the task force to address specified issues; requiring a report to the Governor, Chief Financial Officer, and Legislature; providing for expiration of the task force; requiring the Office of Insurance Regulation to submit reports to the Legislature relating to the insurability of certain attached or free standing structures and decreases in policyholder hurricane deductibles based on policyholder hurricane damage mitigation measures; providing report requirements; providing duties of the office; providing appropriations; specifying uses and purposes of appropriations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (2), paragraphs (c) and (d) of subsection (4), paragraph (b) of subsection (5), and paragraph (b) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.--

(2) DEFINITIONS.--As used in this section:

(d) "Losses" means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and shall exclude loss adjustment expenses. "Losses" does not include losses for fair rental value, loss of rent or rental income ~~use~~, or business interruption losses.

(4) REIMBURSEMENT CONTRACTS.--

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to a limit of $15 billion for that contract year adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2003, provided the dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the ~~cash~~ balance of the fund as of December 31 as defined by rule which occurred over the prior calendar year.

2. In May before the start of the upcoming contract year and in October during the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity and the projected balance of the fund as of December 31. After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss

reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the board shall:

~~a. First reimburse insurers writing covered policies, which insurers are in full compliance with this section and have~~

~~petitioned the Office of Insurance Regulation and qualified as limited apportionment companies under s. 627.351(2)(b)3. The amount of such reimbursement shall be the lesser of $10 million or an amount equal to 10 times the insurer's reimbursement premium for the current year. The amount of reimbursement paid under this sub-subparagraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This sub-subparagraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds $2 billion. Only one member of any insurer group may receive reimbursement under this sub-subparagraph.~~

a.~~b.~~ Next pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year; provided, entities created pursuant to s. 627.351 shall be further reimbursed in accordance with sub-subparagraph b. ~~c.~~

b.~~c.~~ Thereafter, establish the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient to reimburse entities created pursuant to s. 627.351 based on reimbursable losses exceeding the amounts payable pursuant to sub-subparagraph a. ~~b.~~ for the current contract year.

(5) REIMBURSEMENT PREMIUMS.--

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the

actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each $1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, ~~a factor providing for more rapid cash buildup in the fund until the fund capacity for a single hurricane season is fully funded,~~ and other such factors deemed by the board to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula shall include a factor of 25 percent of the fund's actuarially indicated premium in order to provide for more rapid cash buildup in the fund. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(6) REVENUE BONDS.--

(b) Emergency assessments.--

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of future premium collections and is subject to annual adjustments by the board to reflect changes in premiums subject to assessments collected under this subparagraph in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one

contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue for as long as ~~until~~ the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. With respect to each insurer collecting premiums that are subject to the assessment, the insurer shall collect the assessment at the same time as it collects the premium payment for each policy and shall remit the assessment collected to the fund or corporation as provided in the order issued by the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus

lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not

exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2010 ~~2007~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2010 ~~2007~~.

Section 2. Section 215.558, Florida Statutes, is created to read:

215.558 Florida Hurricane Damage Prevention Endowment.--

(1) PURPOSE AND INTENT.--The purpose of this section is to provide a continuing source of funding for financial incentives to encourage residential property owners of this state to retrofit their properties to make them less vulnerable to hurricane damage, to help decrease the cost of residential property and casualty insurance, and to provide matching funds to local governments and nonprofit entities for projects that will reduce hurricane damage to residential properties. It is the intent of the Legislature that this section be construed liberally to effectuate its purpose.

(2) DEFINITIONS.--As used in this section:

(a) "Board" means the State Board of Administration.

(b) "Corpus" means the money that has been appropriated to the endowment by the 2006 Legislature, together with any amounts subsequently appropriated to the endowment that are specifically designated as contributions to the corpus and any grants, gifts, or donations to the endowment that are specifically designated as contributions to the corpus.

(c) "Earnings" means any money in the endowment in excess of the corpus, including any income generated by investments, any increase in the market value of investments net of decreases in market value, and any appropriations, grants, gifts, or donations to the endowment not specifically designated as contributions to the corpus.

(d) "Endowment" means the Florida Hurricane Damage Prevention Endowment created by this section.

(e) "Program administrator" means the Department of Financial Services.

(3) ADMINISTRATION.--

(a) The board shall invest endowment assets as provided in this section.

(b) The board may invest and reinvest funds of the endowment in accordance with s. 215.47 and consistent with board policy.

(c) The investment objective shall be long-term preservation of the value of the corpus and a specified regular annual cash outflow for appropriation, as nonrecurring revenue, for the purposes specified in subsection (4).

(d) In accordance with s. 215.44, the board shall report on the financial status of the endowment in its annual investment report to the Legislature.

(e) Costs and fees of the board for investment services shall be deducted from the assets of the endowment.

(4) FINANCIAL INCENTIVES FOR RESIDENTIAL HURRICANE DAMAGE PREVENTION ACTIVITIES.--

(a) Not less than 80 percent of the net earnings of the endowment shall be expended for financial incentives to residential property owners as described in paragraph (b), and no more than the remainder of the net earnings of the endowment shall be expended for matching fund grants to local governments and nonprofit entities for projects that will reduce hurricane damage to residential properties as described in paragraph (c). Any funds authorized for expenditure but not expended for these purposes shall be returned to the endowment.

(b)1. The program administrator, by rule, shall establish a request for a proposal process to annually solicit proposals from lending institutions under which the lending institution will provide interest-free loans to homestead property owners to pay for inspections of homestead property to determine what mitigation measures are needed and for improvements to existing residential properties intended to reduce the homestead property's vulnerability to hurricane damage, in exchange for funding from the endowment.

2. In order to qualify for funding under this paragraph, an interest-free loan program must include an inspection of homestead property to determine what mitigation measures are

needed, a means for verifying that the improvements to be paid for from loan proceeds have been demonstrated to reduce a homestead property's vulnerability to hurricane damage, and a means for verifying that the proceeds were actually spent on such improvements. The program must include a method for awarding loans according to the following priorities:

a. The highest priority must be given to single-family owner-occupied homestead dwellings, insured at $500,000 or less, located in the areas designated as high-risk areas for purposes of coverage by the Citizens Property Insurance Corporation.

b. The next highest priority must be given to single-family owner-occupied homestead dwellings, insured at $500,000 or less, covered by the Citizens Property Insurance Corporation, wherever located.

c. The next highest priority must be given to single-family owner-occupied homestead dwellings, insured at $500,000 or less, that are more than 40 years old.

d. The next highest priority must be given to all other single-family owner-occupied homestead dwellings insured at $500,000 or less.

3. The program administrator shall evaluate proposals based on the following factors:

a. The degree to which the proposal meets the requirements of subparagraph 2.

b. The lending institution's plan for marketing the loans.

c. The anticipated number of loans to be granted relative to the total amount of funding sought.

4. The program administrator shall annually solicit proposals from local governments and nonprofit entities for projects that will reduce hurricane damage to homestead properties. The program administrator may provide up to 50 percent of the funding for such projects. The projects may include educational programs, repair services, property inspections, and hurricane vulnerability analyses and such other projects as the program administrator determines to be consistent with the purposes of this section.

(5) ADVISORY COUNCIL.--There is created an advisory council to provide advice and assistance to the program administrator with regard to its administration of the endowment. The advisory council shall consist of:

(a) A representative of lending institutions, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Bankers Association.

(b) A representative of residential property insurers, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Insurance Council.

(c) A representative of home builders, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Home Builders Association.

(d) A faculty member of a state university selected by the Financial Services Commission who is an expert in hurricane-resistant construction methodologies and materials.

(e) Two members of the House of Representatives selected by the Speaker of the House of Representatives.

(f) Two members of the Senate selected by the President of the Senate.

(g) The senior officer of the Florida Hurricane Catastrophe Fund.

(h) The executive director of Citizens Property Insurance Corporation.

(i) The director of the Division of Emergency Management of the Department of Community Affairs.

Members appointed under paragraphs (a)-(d) shall serve at the pleasure of the Financial Services Commission. Members appointed under paragraphs (e) and (f) shall serve at the pleasure of the appointing officer. All other members shall serve ex officio. Members of the advisory council shall serve without compensation but may receive reimbursement as provided in s. 112.061 for per diem and travel expenses incurred in the performance of their official duties.

Section 3. Section 215.5586, Florida Statutes, is created to read:

215.5586 Florida Comprehensive Hurricane Damage Mitigation Program.--There is established within the Department of Financial Services the Florida Comprehensive Hurricane Damage Mitigation Program. The program shall be administered by an individual with prior executive experience in the private sector in the areas of insurance, business, or construction. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that shall include the following:

(1) WIND CERTIFICATION AND HURRICANE MITIGATION INSPECTIONS.--Free home-retrofit inspections of single-family site-built, owner-occupied, residential property shall be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The Department of Financial Services shall establish a request for proposals to solicit proposals from wind certification entities to provide at no cost to homeowners wind certification and hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

(a) A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

(b) A range of cost estimates regarding the mitigation features.

(c) Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

(d) A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

(2) GRANTS.--Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. The program shall create a process in which mitigation contractors agree to participate and seek reimbursement from the state and homeowners select from a list

of participating contractors. Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property.

(3) LOANS.--Financial incentives shall be provided as authorized by s. 215.558.

(4) EDUCATION AND CONSUMER AWARENESS.--Multimedia public education, awareness, and advertising efforts designed to specifically address mitigation techniques shall be employed, as well as a component to support ongoing consumer resources and referral services.

(5) RULES.--The Department of Financial Services shall adopt rules pursuant to ss. 120.536(1) and 120.54 governing the Florida Comprehensive Hurricane Damage Mitigation Program.

Section 4. Section 252.63, Florida Statutes, is created to read:

252.63 Commissioner of Insurance Regulation; powers in a state of emergency.--

(1) It is the purpose and intent of this section to provide the Commissioner of Insurance Regulation the authority to temporarily modify or suspend provisions of the Florida Insurance Code in order to expedite the recovery of communities affected by a disaster or other emergency and encourage insurance companies, entities, and persons subject to the Florida Insurance Code and the jurisdiction of the office to meet the insurance needs of such communities.

(2)(a) When the Governor declares a state of emergency pursuant to s. 252.36, the commissioner may issue:

1. One or more general orders applicable to all insurance companies, entities, and persons, as defined in s. 624.04, that are subject to the Florida Insurance Code and that serve any portion of the area of the state under the state of emergency; or

2. One or more specific orders to particular insurance companies, entities, and persons that are subject to the Florida Insurance Code, as defined in s. 624.01, which orders may modify or suspend, as to those companies, entities, and persons, all or any part of the Florida Insurance Code, or any applicable rule, consistent with the stated purposes of the Florida Insurance Code.

(b) An order issued by the commissioner under this section becomes effective upon issuance and continues for 120 days unless terminated sooner by the commissioner. The commissioner may extend an order for one additional period of 120 days if he or she determines that the emergency conditions that gave rise to the initial order still exist. By concurrent resolution, the Legislature may terminate any order issued under this section.

(3) The commissioner shall publish in the next available publication of the Florida Administrative Weekly a copy of the text of any order issued under this section, together with a statement describing the modification or suspension and explaining how the modification or suspension will facilitate recovery from the emergency.

Section 5. Subsections (1) and (2) of section 626.918, Florida Statutes, are amended to read:

626.918 Eligible surplus lines insurers.--

(1) A ~~No~~ surplus lines agent may not ~~shall~~ place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer, except as permitted under subsections (5) and (6).

(2) An ~~No~~ unauthorized insurer may not ~~shall~~ be or become an eligible surplus lines insurer unless made eligible by the office in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by the Florida Surplus Lines Service Office.~~;~~

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed and must have been such an insurer for not less than the 3 years next preceding or must be the wholly owned subsidiary of such authorized insurer or must be the wholly owned subsidiary of an already eligible surplus lines insurer as to the kind or kinds of insurance proposed for a period of not less than the 3 years next preceding. However, the office may waive the 3-year requirement if the insurer provides a product or service not readily available to the consumers of this state or has operated successfully for a period of at least 1 year next preceding and has capital and surplus of not less than $25 million.~~;~~

(c) Before granting eligibility, the requesting surplus lines agent or the insurer shall furnish the office with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate (in the case of statements originally made in the currencies of other

countries) then-current and shown in the statement, and with such additional information relative to the insurer as the office may request.~~,~~

(d)1.a. The insurer must have and maintain surplus as to policyholders of not less than $15 million; in addition, an alien insurer must also have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the office to be reasonably adequate, in an amount not less than $5.4 million. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625 provided, however, that in the case of an alien insurance company, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States financial institution, as defined in subparagraph 2., may be used to fund the trust.~~,~~

b.~~2.~~ For those surplus lines insurers that were eligible on January 1, 1994, and that maintained their eligibility thereafter, the required surplus as to policyholders shall be:

(I)~~a.~~ On December 31, 1994, and until December 30, 1995, $2.5 million.

(II) ~~b.~~ On December 31, 1995, and until December 30, 1996, $3.5 million.

(III) ~~c.~~ On December 31, 1996, and until December 30, 1997, $4.5 million.

(IV) ~~d.~~ On December 31, 1997, and until December 30, 1998, $5.5 million.

(V) ~~e.~~ On December 31, 1998, and until December 30, 1999, $6.5 million.

(VI) ~~f.~~ On December 31, 1999, and until December 30, 2000, $8 million.

(VII) ~~g.~~ On December 31, 2000, and until December 30, 2001, $9.5 million.

(VIII) ~~h.~~ On December 31, 2001, and until December 30, 2002, $11 million.

(IX) ~~i.~~ On December 31, 2002, and until December 30, 2003, $13 million.

(X) ~~j.~~ On December 31, 2003, and thereafter, $15 million.

c. ~~3.~~ The capital and surplus requirements as set forth in sub-subparagraph b. ~~subparagraph 2.~~ do not apply in the case of an insurance exchange created by the laws of individual states, where the exchange maintains capital and surplus pursuant to the requirements of that state, or maintains capital and surplus in an amount not less than $50 million in the aggregate. For an insurance exchange which maintains funds in the amount of at least $12 million for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus in an amount not less than $3 million. If the insurance exchange does not maintain funds in the amount of

at least $12 million for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements set forth in sub-subparagraph b. ~~subparagraph 2.;~~

d.~~4.~~ A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer as set forth in its holding company registration statement, as set forth in s. 628.801 and rules adopted thereunder, may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, subject to the requirement that the surplus lines insurer shall at all times be in compliance with the requirements of chapter 625.

The election shall be submitted to the office and shall be effective upon the office's being satisfied that the requirements of sub-subparagraph d. ~~subparagraph 4.~~ have been met. The initial date of election shall be the date of office approval. The election approval application shall be on a form adopted by commission rule. The office may approve an election form submitted pursuant to sub-subparagraph d. ~~subparagraph 4.~~ only if it was on file with the former Department of Insurance before February 28, 1998.~~;~~

2. For purposes of letters of credit under subparagraph 1., the term "qualified United States financial institution" means an institution that:

a. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state.

b. Is regulated, supervised, and examined by authorities of the United States or any state having regulatory authority over banks and trust companies.

c. Has been determined by the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the office.

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.~~;~~

(f) The insurer must be eligible, as for authority to transact insurance in this state, under s. 624.404(3).~~; and~~

(g) This subsection does not apply as to unauthorized insurers made eligible under s. 626.917 as to wet marine and aviation risks.

Section 6. Paragraph (j) is added to subsection (2) of section 627.062, Florida Statutes, and subsections (9) and (10) are added to that section, to read:

627.062 Rate standards.--

(2) As to all such classes of insurance:

(j) Effective January 1, 2007, notwithstanding any other provision of this section:

1. With respect to any residential property insurance subject to regulation under this section, a rate filing, including, but not limited to, any rate changes, rating factors, territories, classification, discounts, and credits, with respect to any policy form, including endorsements issued with the form, that results in an overall average statewide premium increase or decrease of no more than 5 percent above or below the premium that would result from the insurer's rates then in effect shall not be subject to a determination by the office that the rate is excessive or unfairly discriminatory except as provided in subparagraph 3., or any other provision of law, provided all changes specified in the filing do not result in an overall premium increase of more than 10 percent for any one territory, for reasons related solely to the rate change. As used in this subparagraph, the term "insurer's rates then in effect" includes only rates that have been lawfully in effect under this section or rates that have been determined to be lawful through administrative proceedings or judicial proceedings.

2. An insurer may not make filings under this paragraph with respect to any policy form, including endorsements issued with the form, if the overall premium changes resulting from such filings exceed the amounts specified in this paragraph in any 12-month period. An insurer may proceed under other provisions of this section or other provisions of law if the insurer seeks to exceed the premium or rate limitations of this paragraph.

3. This paragraph does not affect the authority of the office to disapprove a rate as inadequate or to disapprove a filing for the unlawful use of unfairly discriminatory rating factors that are prohibited by the laws of this state. An insurer electing to implement a rate change under this paragraph shall submit a filing to the office at least 30 days prior to the effective date of the rate change. The office shall have 30 days after the filing's submission to review the filing and determine if the rate is inadequate or uses unfairly discriminatory rating factors. Absent a finding by the office within such 30-day period that the rate is inadequate or that the insurer has used unfairly discriminatory rating factors, the filing is deemed approved. If the office finds during the 30-day period that the filing will result in inadequate premiums or otherwise endanger the insurer's solvency, the office shall suspend the rate decrease. If the insurer is implementing an overall rate increase, the results of which continue to produce an inadequate rate, such increase shall proceed pending additional action by the office to ensure the adequacy of the rate.

4. This paragraph does not apply to rate filings for any insurance other than residential property insurance.

The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

(9) Notwithstanding any other provision of this section, any rate filing or applicable portion of the rate filing that

includes the peril of wind in the high-risk account of the Citizens Property Insurance Corporation shall be deemed approved upon submission to the office if the filing or the applicable portion of the filing requests approval of a rate that is less than the approved rate for similar risks insured in the high-risk account of the corporation unless the office determines that such rate is inadequate or unfairly discriminatory as provided in subsection (2).

(10)(a) Beginning January 1, 2007, the office shall annually provide a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leader of each house of the Legislature, and the chairs of the standing committees of each house of the Legislature having jurisdiction over insurance issues, specifying the impact of flexible rate regulation under paragraph (2)(j) on the degree of competition in insurance markets in this state.

(b) The report shall include a year-by-year comparison of the number of companies participating in the market for each class of insurance and the relative rate levels. The report shall also specify:

1. The number of rate filings made under paragraph (2)(j), the rate levels under those filings, and the market share affected by those filings.

2. The number of filings made on a file and use basis, the rate levels under those filings, and the market share affected by those filings.

3. The number of filings made on a use and file basis, the rate levels under those filings, and the market share affected by those filings.

4. Recommendations to promote competition in the insurance market and further protect insurance consumers.

Section 7. Paragraph (c) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.--

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

(c) With respect to a rate filing under s. 627.062, an insurer may employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable to determine hurricane loss factors for use in a rate filing under s. 627.062. Such findings and factors are admissible and relevant in consideration of a rate filing by the office or in any arbitration or administrative or judicial review only if the office and the consumer advocate appointed pursuant to s. 627.0613 have a reasonable opportunity to review ~~access to~~ all of the basic assumptions and factors that were used in developing the actuarial methods, principles, standards, models, or output ranges. After review of the specific models by the commission, the office and the consumer advocate may not pose any questions generated from their respective reviews that duplicate or compromise the conclusions of the commission relative to the accuracy or reliability of the models in producing hurricane loss factors for use in a rate filing under

s. 627.062~~, and are not precluded from disclosing such information in a rate proceeding~~.

Section 8. Section 627.06281, Florida Statutes, is amended to read:

627.06281 Public hurricane loss projection model; reporting of data by insurers.--

(1) Within 30 days after a written request for loss data and associated exposure data by the office or a type I center within the State University System established to study mitigation, residential property insurers and licensed rating and advisory organizations that compile residential property insurance loss data shall provide loss data and associated exposure data for residential property insurance policies to the office or to a type I center within the State University System established to study mitigation, as directed by the office, for the purposes of developing, maintaining, and updating a public model for hurricane loss projections. The loss data and associated exposure data provided shall be in writing.

(2) The office may not use the public model for hurricane loss projection referred to in subsection (1) for any purpose under s. 627.062 or s. 627.351 until the model has been submitted to the Florida Commission on Hurricane Loss Projection Methodology for review under s. 627.0628 and the commission has found the model to be accurate and reliable pursuant to the same process and standards as the commission uses for the review of other hurricane loss projection models.

Section 9. Subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(6) CITIZENS PROPERTY INSURANCE CORPORATION.--

(a)1.a. The Legislature finds that actual and threatened catastrophic losses to property in this state from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed. It is in the public interest and a public purpose to assist in ensuring ~~assuring~~ that homestead property in the state is insured so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare; to the economy of the state; and to the revenues of the state and local governments needed to provide for the public welfare. It is necessary, therefore, to provide property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends by this subsection that property insurance be provided and that it continues, as long as necessary, through an entity organized to achieve efficiencies and economies, while providing service to policyholders, applicants, and agents that is no less than the quality generally provided in the voluntary market, all toward the achievement of the foregoing public purposes. Because it is essential for the corporation to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the income of the corporation be exempt from federal income taxation and that

interest on the debt obligations issued by the corporation be exempt from federal income taxation.

b. The Legislature finds and declares that:

(I) The commitment of the state, as expressed in sub-subparagraph a., to providing a means of ensuring the availability of property insurance through a residual market mechanism is hereby reaffirmed.

(II) Despite legislative efforts to ensure that the residual market for property insurance is self-supporting to the greatest reasonable extent, residual market policyholders are to some degree subsidized by the general public through assessments on owners of property insured in the voluntary market and their insurers and through the potential use of general revenues of the state to eliminate or reduce residual market deficits.

(III) The degree of such subsidy is a matter of public policy. It is the intent of the Legislature to better control the subsidy through at least the following means:

(A) Restructuring the residual market mechanism to provide separate treatment of homestead and nonhomestead properties, with the intent of continuing to provide an insurance program with limited subsidies for homestead properties while providing a nonsubsidized insurance program for nonhomestead properties.

(B) Redefining the concept of rate adequacy in the subsidized residual market with the intent of ensuring a rate structure that will enable the subsidized residual market to be self-supporting except in the event of hurricane losses of a legislatively specified magnitude. It is the intent of the Legislature that the funding of the subsidized residual market

be structured to be self-supporting up to the point of its 100-year probable maximum loss and that the funding be structured to make reliance on assessments or other sources of public funding necessary only in the event of a 100-year probable maximum loss or larger loss.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known, as of July 1, 2002, as the Citizens Property Insurance Corporation. The corporation shall provide insurance for homesteaded residential property and may provide insurance for residential and commercial property, for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the office. The plan is subject to continuous review by the office. The office may, by order, withdraw approval of all or part of a plan if the office determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies, and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and

treatment of the highest possible level but never less than that generally provided in the voluntary market. It also is intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An authorized insurer's assessment liability shall begin on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and shall terminate 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into four ~~three~~ separate accounts as follows:

(I) Three separate homestead accounts that may provide coverage only for homestead properties. The term "homestead property" means a residential property that has been granted a homestead exemption under chapter 196. The term also includes a property that is qualified for such exemption but has not applied for the exemption as of the date of issuance of the policy, provided the policyholder obtains the exemption within 1 year after initial issuance of the policy. The term also includes an owner-occupied mobile or manufactured home as defined in s. 320.01 permanently affixed to real property regardless of whether the owner of the mobile or manufactured home is also the owner of the land on which the mobile or manufactured home is permanently affixed. However, the term does not include a mobile home that is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and is not owner-occupied. For the purposes of this sub-sub-subparagraph, the term "homestead property" also includes property covered by tenant's insurance and commercial lines residential policies. The accounts providing coverage only for homestead properties are:

(A) ~~(I)~~ A personal lines account for personal residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for such

policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(B) ~~(II)~~ A commercial lines account for commercial residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide coverage for basic property perils on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for such policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(C) ~~(III)~~ A high-risk account for personal residential policies and commercial residential ~~and commercial nonresidential~~ property policies issued by the corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The high-risk account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property. The office may remove territory from the area eligible for wind-only and quota share coverage if, after a public hearing, the office finds that authorized insurers in the voluntary market are willing and able to write sufficient amounts of personal and commercial

residential coverage for all perils in the territory, including coverage for the peril of wind, such that risks covered by wind-only policies in the removed territory could be issued a policy by the corporation in either the personal lines or commercial lines account without a significant increase in the corporation's probable maximum loss in such account. Removal of territory from the area eligible for wind-only or quota share coverage does not alter the assignment of wind coverage written in such areas to the high-risk account.

(II)(A) A separate nonhomestead account for all properties that otherwise meet all of the criteria for eligibility for coverage within one of the three homestead accounts described in sub-sub-subparagraph (I) but that do not meet the definition of homestead property specified in sub-sub-subparagraph (I). The nonhomestead account shall provide the same types of coverage as are provided by the three homestead accounts, including wind-only coverage in the high-risk account area. In order to be eligible for coverage in the nonhomestead account, at the initial issuance of the policy and at renewal the property owner shall provide the corporation with a sworn affidavit stating that the property has been rejected for coverage by at least three authorized insurers and at least three surplus lines insurers.

(B) An authorized insurer may provide coverage to a nonhomestead property owner on an individual risk rate basis. Rates and forms of an authorized insurer for nonhomestead properties are not subject to ss. 627.062 and 627.0629, except s. 627.0629(2)(b). Such rates and forms are subject to all other

applicable provisions of this code and rules adopted under this code. During the course of an insurer's market conduct examination, the office may review the rate for any nonhomestead property to determine if such rate is inadequate or unfairly discriminatory. Rates on nonhomestead property may be found inadequate by the office if they are clearly insufficient, together with the investment income attributable to the insurer, to sustain projected losses and expenses in the class of business to which such rates apply. Rates on nonhomestead property may also be found inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks. Rates on nonhomestead property may be found to be unfairly discriminatory as to a risk or group of risks by the office if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks. A rating plan, including discounts, credits, or surcharges on nonhomestead property, may also be found to be unfairly discriminatory if the plan fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program adjusted pursuant to s. 627.0625. The office may order an insurer to discontinue using a rate for new policies or upon renewal of a policy if the office finds the rate to be inadequate or unfairly discriminatory. Insurers shall maintain records and documentation relating to rates and forms subject to this sub-

sub-sub-subparagraph for a period of at least 5 years after the effective date of the policy.

b. The three separate homestead accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. When the financing obligations are no longer outstanding, in accordance with the terms of the corresponding financing documents, the corporation may use a single homestead account for all revenues, assets, liabilities, losses, and expenses of the corporation. All revenues, assets, liabilities, losses, and expenses attributable to the nonhomestead account shall be maintained separately.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association shall have a claim against, and recourse to, the accounts referred to in sub-sub-sub-subparagraphs ~~sub-sub-subparagraphs~~ a.(I)(A) and (B)~~(II)~~ and shall have no claim against, or recourse to, the account referred to in sub-sub-sub-subparagraph ~~sub-sub-subparagraph~~ a.(I)(C)~~(III)~~. Creditors of the Florida Windstorm Underwriting Association shall have a claim against, and recourse to, the account referred to in sub-sub-sub-subparagraph ~~sub-sub-subparagraph~~ a.(I)(C)~~(III)~~ and shall have no claim against, or recourse to, the accounts referred to in sub-sub-sub-subparagraphs ~~sub-sub-subparagraphs~~ a.(I)(A) and (B)~~(II)~~.

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. No part of the income of the corporation may inure to the benefit of any private person.

3. With respect to a deficit in any of the homestead accounts ~~an account~~:

a. When the deficit incurred in a particular calendar year is not greater than 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (g) and assessable insureds.

b. When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (g) and on assessable insureds in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining deficit shall be recovered through emergency assessments under sub-subparagraph d.

c. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. shall be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the year in which the deficit is incurred ~~assessment~~ bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. shall be paid as required by the corporation's plan of operation and paragraph (g). Notwithstanding any other provision in this subsection, the aggregate amount of a regular assessment levied in connection with a deficit incurred in a particular calendar year shall be reduced by the aggregate amount of the Citizens Property Insurance Corporation policyholder surcharge imposed under subparagraph (c)10. Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the

assessments directly to the corporation as determined by the corporation.

d. Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments under sub-subparagraph a. or sub-subparagraph b., the board shall levy, after verification by the office, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service

Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessments so collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and shall be held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and for all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, Citizens policyholder ~~market equalization~~ surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (g), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional

resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a., sub-subparagraph b., or subparagraph (g)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or other indebtedness.

f. As used in this subsection, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverage on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1) other than insurance on mobile homes used as permanent dwellings.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in

subject lines of business procured by assessable insureds and shall report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and shall assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

4. With respect to a deficit in the nonhomestead account or to any cash flow shortfall that the board determines will create an inability for the nonhomestead account to pay claims when due:

a. The board shall levy an immediate assessment against the premium of each nonhomestead account policyholder, expressed as a uniform percentage of the premium for the policy then in effect. The maximum amount of such assessment is 100 percent of such premium.

b. If the assessment under sub-subparagraph a. is insufficient to enable the account to pay claims and eliminate the deficit in the account, the board may levy an additional assessment to be collected at the time of any issuance or renewal of a nonhomestead account policy during the 1-year period following the levy of the assessment under sub-subparagraph a., expressed as a uniform percentage of the

premium for the policy for the forthcoming policy period. The maximum amount of such assessment is 100 percent of such premium.

c. If the assessments under sub-subparagraphs a. and b. are insufficient to enable the account to pay claims and eliminate the deficit in the account, the board may make a loan from any of the homestead accounts to the nonhomestead account, subject to approval by the office and provided that such loan does not impair the financial status of any of the homestead accounts.

5. A policyholder in a nonhomestead account who has not paid a deficit assessment levied by the corporation shall be ineligible for coverage by a surplus lines insurer or authorized insurer.

(c) The plan of operation of the corporation:

1. Must provide for adoption of residential property and casualty insurance policy forms, rates, and underwriting rules and commercial residential and nonresidential property insurance forms, rates, and underwriting rules which ~~forms~~ must be approved by the office prior to use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage

market, but which coverage is more limited than the coverage under a standard policy.

c. Commercial lines residential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. that contain more restrictive coverage.

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an

authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance agreement, may not be altered by the inability of the other party to the agreement to pay its specified percentage of hurricane losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that neither the authorized insurer nor the corporation may be held responsible beyond its specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the quota share primary insurance agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The

corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of quota share agreements, pricing of quota share agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer shall be voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation shall have the power to borrow funds, by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary

to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (g)2., in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation is authorized to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.a. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of 8 individuals who are residents of this state, from different geographical areas of this state. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board, effective August 1, 2005. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board, as recommended by the Chief Financial Officer, and serve at the pleasure of the board. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board and the Chief Financial Officer.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar

coverage. The members of the advisory committee shall consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members must serve for 3-year terms and may serve for consecutive terms. The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed

with the office, a basic policy including wind coverage, the risk is not eligible for any policy issued by the corporation. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the

insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation.

If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. To preserve existing incentives for carriers to write dwellings in the voluntary market and not in the corporation, the corporation shall continue to offer authorized insurers, including insurers writing dwellings valued at $1 million or more, the same voluntary writing credits that were available on January 1, 2006, to carriers writing wind coverage for dwellings in the areas eligible for coverage in the high-risk account.

d. With respect to personal lines residential risks, if the risk is a dwelling with an insured value of $1 million or more, or if the risk is one that is excluded from the coverage to be provided by the condominium association under s. 718.111(11)(b) and that is insured by the condominium unit owner for a combined dwelling and contents replacement cost of $1 million or more, the risk is not eligible for any policy issued

by the corporation. Rates and forms for personal lines residential risks not eligible for coverage by the corporation specified by this sub-subparagraph are not subject to ss. 627.062 and 627.0629. Such rates and forms are subject to all other applicable provisions of this code and rules adopted under this code. During the course of an insurer's market conduct examination, the office may review the rate for any risk to which the provisions of this sub-subparagraph are applicable to determine if such rate is inadequate or unfairly discriminatory. Rates on personal lines residential risks not eligible for coverage by the corporation may be found inadequate by the office if they are clearly insufficient, together with the investment income attributable to such risks, to sustain projected losses and expenses in the class of business to which such rates apply. Rates on personal lines residential risks not eligible for coverage by the corporation may also be found inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks. Rates on personal lines residential risks not eligible for coverage by the corporation may be found to be unfairly discriminatory as to a risk or group of risks by the office if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks. A rating plan, including discounts, credits, or surcharges on personal lines residential risks not eligible for coverage by the corporation

may also be found to be unfairly discriminatory if the plan fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program adjusted pursuant to s. 627.0625. The office may order an insurer to discontinue using a rate for new policies or upon renewal of a policy if the office finds the rate to be inadequate or unfairly discriminatory. Insurers must maintain records and documentation relating to rates and forms subject to this sub-subparagraph for a period of at least 5 years after the effective date of the policy.

e. For policies subject to nonrenewal as a result of the risk being no longer eligible for coverage pursuant to sub-subparagraph d., the corporation shall, directly or through the market assistance plan, make information from confidential underwriting and claims files of policyholders available only to licensed general lines agents who register with the corporation to receive such information according to the following procedures:

(I) By August 1, 2006, the corporation shall provide policyholders who are not eligible for renewal pursuant to sub-subparagraph d. the opportunity to request in writing, within 30 days after the notification is sent, that information from their confidential underwriting and claims files not be released to licensed general lines agents registered pursuant to sub-sub-subparagraph e.(II);

(II) By August 1, 2006, the corporation shall make available to licensed general lines agents the registration procedures to be used to obtain confidential information from

underwriting and claims files for policies not eligible for renewal pursuant to sub-subparagraph d. As a condition of registration, the corporation shall require the licensed general lines agent to attest that the agent has the experience and relationships with authorized or surplus lines carriers to attempt to offer replacement coverage for policies not eligible for renewal pursuant to sub-subparagraph d.

(III) By September 1, 2006, the corporation shall make available through a secured website to licensed general lines agents registered pursuant to sub-sub-subparagraph e.(II) application, rating, loss history, mitigation, and policy type information relating to all policies not eligible for renewal pursuant to sub-subparagraph d. and for which the policyholder has not requested the corporation withhold such information pursuant to sub-sub-subparagraph e.(I). The licensed general lines agent registered pursuant to sub-sub-subparagraph e.(II) may use such information to contact and assist the policyholder in securing replacement policies and the agent may disclose to the policyholder such information was obtained from the corporation.

f. With respect to nonhomestead property, eligibility must be determined in accordance with sub-sub-sub-subparagraph (b)2.a.(II)(A).

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account

attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation shall make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss in the homestead accounts as determined by the board of governors.

10. Must provide that in the event of regular deficit assessments under sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b., in the personal lines homestead account, the commercial lines residential homestead account, or the high-risk homestead account, the corporation shall levy upon corporation homestead

account policyholders in its next rate filing, or by a separate rate filing solely for this purpose, a Citizens policyholder ~~market equalization~~ surcharge arising from a regular assessment in such account in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for subject lines of business for the ~~prior calendar~~ year preceding the year in which the deficit to which the regular assessment related is incurred. Citizens policyholder ~~Market equalization~~ surcharges under this subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay the Citizens policyholder ~~a market equalization~~ surcharge shall be treated as failure to pay premium. Notwithstanding any other provision of this section, for purposes of the Citizens policyholder surcharges to be levied pursuant to this subparagraph, the total amount of the regular assessment to which such Citizens policyholder surcharge relates shall be determined as set forth in sub-subparagraphs (b)3.a., b., and c.

11. The policies issued by the corporation must provide that, if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation.

12. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the corporation or an insurer writing coverage pursuant to part VIII

of chapter 626. The notice shall also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

13. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the corporation. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

14. Must provide that, with respect to the high-risk homestead account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. In no event shall a limited apportionment company be required to participate in the portion of any assessment, within the high-risk account, pursuant to sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the aggregate which exceeds $50 million

after payment of available high-risk account funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan shall provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (g)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

15. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

16. Must provide that the hurricane deductible for any property in the nonhomestead account with an insured value of $250,000 or more must be at least 5 percent of the insured value.

17. Must provide that the application for coverage under the nonhomestead account and the declaration page of each nonhomestead account policy include a statement in boldface 12-point type specifying that public subsidies do not support the corporation's coverage of nonhomestead property; that if the nonhomestead account of the corporation sustains a deficit or is unable to pay claims, the nonhomestead policyholder shall be

subject to an immediate assessment in an amount up to 100 percent of the premium and a further assessment upon renewal of the policy; and that the applicant or policyholder may wish to seek alternative coverage from an authorized insurer or surplus lines insurer that will not be subject to such potential assessments.

18. Must provide that the application for coverage under any of the homestead accounts and the declaration page of each homestead account policy include a statement in boldface 12-point type specifying that a false declaration of homestead status for purposes of obtaining coverage in any of the homestead accounts may constitute the offense of insurance fraud, as prohibited and punishable as a felony under s. 817.234.

19. Must provide for purchase by the corporation of catastrophe reinsurance on the nonhomestead account in amounts sufficient, together with coverage under the Florida Hurricane Catastrophe Fund, to cover the account's 250-year probable maximum loss.

(d)1.a. It is the intent of the Legislature that the rates for coverage provided by the corporation be actuarially sound and not competitive with approved rates charged in the admitted voluntary market, so that the corporation functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. Rates shall include a residual market risk load that reflects the concentrated exposure of the corporation and the impact of adverse selection as well as an appropriate catastrophe loading

factor that reflects the actual catastrophic exposure of the corporation.

b. It is the intent of the Legislature to reaffirm the requirement of rate adequacy in the residual market. Recognizing that rates may comply with the intent expressed in sub-subparagraph a. and yet be inadequate and recognizing the public need to limit subsidies within the residual market, it is the further intent of the Legislature to establish statutory standards for rate adequacy. Such standards are intended to supplement the standard specified in s. 627.062(2)(e)3., providing that rates are inadequate if they are clearly insufficient to sustain projected losses and expenses in the class of business to which they apply.

2. For each county, the average rates of the corporation for each line of business for personal lines residential policies excluding rates for wind-only policies shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state for that line of business in the preceding year, except that with respect to mobile home coverages, the average rates of the corporation shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 5 insurers with the greatest total written premium for mobile home owner's policies in the state in the preceding year.

3. Rates for personal lines residential wind-only policies must be actuarially sound and not competitive with approved rates charged by authorized insurers. Corporation rate manuals

shall include a rate surcharge for seasonal occupancy. To ensure that personal lines residential wind-only rates are not competitive with approved rates charged by authorized insurers, the corporation, in conjunction with the office, shall develop a wind-only ratemaking methodology, which methodology shall be contained in each rate filing made by the corporation with the office. If the office determines that the wind-only rates or rating factors filed by the corporation fail to comply with the wind-only ratemaking methodology provided for in this subsection, it shall so notify the corporation and require the corporation to amend its rates or rating factors to come into compliance within 90 days of notice from the office.

4. For the purposes of establishing a pilot program to evaluate issues relating to the availability and affordability of insurance in an area where historically there has been little market competition, the provisions of subparagraph 2. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies. The provisions of subparagraph 3. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies in the area of that county which is eligible for wind-only coverage. In this county, the rates for personal lines residential coverage shall be actuarially sound and not excessive, inadequate, or unfairly discriminatory and are subject to the other provisions of the paragraph and s. 627.062. The commission shall adopt rules

establishing the criteria for determining whether a reasonable degree of competition exists for personal lines residential policies in Monroe County. By March 1, 2006, the office shall submit a report to the Legislature providing an evaluation of the implementation of the pilot program affecting Monroe County.

5. Rates for commercial lines coverage shall not be subject to the requirements of subparagraph 2., but shall be subject to all other requirements of this paragraph and s. 627.062.

6.a. Nothing in this paragraph shall require or allow the corporation to adopt a rate that is inadequate under s. 627.062 or under sub-subparagraph b. or sub-subparagraph c.

b. With respect to rates for coverage in any homestead account, a rate is deemed inadequate if the rate is not sufficient to generate, by means of cash flow, procurement of coverage under the Florida Hurricane Catastrophe Fund; procurement of reinsurance; and investment income, moneys sufficient to pay all claims and expenses reasonably expected to result from a 100-year probable maximum loss event without resort to any regular or emergency assessments, long-term debt, state revenues, or other funding sources that reflect any subsidy from persons or entities other than corporation homestead accounts policyholders.

c. With respect to rates for coverage in the nonhomestead account, a rate is deemed inadequate if the rate is not sufficient to generate, by means of cash flow, procurement of coverage under the Florida Hurricane Catastrophe Fund; procurement of reinsurance; and investment income, moneys

sufficient to pay all claims and expenses reasonably expected to result from a 250-year probable maximum loss event without resort to any assessments, debt, state revenues, or other funding sources that reflect any subsidy from persons or entities other than corporation nonhomestead account policyholders.

7. The corporation shall certify to the office at least twice annually that its personal lines rates comply with the requirements of subparagraphs 1., ~~and~~ 2., and 6. If any adjustment in the rates or rating factors of the corporation is necessary to ensure such compliance, the corporation shall make and implement such adjustments and file its revised rates and rating factors with the office. If the office thereafter determines that the revised rates and rating factors fail to comply with the provisions of subparagraphs 1. and 2., it shall notify the corporation and require the corporation to amend its rates or rating factors in conjunction with its next rate filing. The office must notify the corporation by electronic means of any rate filing it approves for any insurer among the insurers referred to in subparagraph 2.

8. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided for in s. 624.509 to augment the financial resources of the corporation.

~~9.a. To assist the corporation in developing additional ratemaking methods to assure compliance with subparagraphs 1. and 4., the corporation shall appoint a rate methodology panel consisting of one person recommended by the Florida Association~~

~~of Insurance Agents, one person recommended by the Professional Insurance Agents of Florida, one person recommended by the Florida Association of Insurance and Financial Advisors, one person recommended by the insurer with the highest voluntary market share of residential property insurance business in the state, one person recommended by the insurer with the second-highest voluntary market share of residential property insurance business in the state, one person recommended by an insurer writing commercial residential property insurance in this state, one person recommended by the Office of Insurance Regulation, and one board member designated by the board chairman, who shall serve as chairman of the panel.~~

~~b. By January 1, 2004, the rate methodology panel shall provide a report to the corporation of its findings and recommendations for the use of additional ratemaking methods and procedures, including the use of a rate equalization surcharge in an amount sufficient to assure that the total cost of coverage for policyholders or applicants to the corporation is sufficient to comply with subparagraph 1.~~

~~c. Within 30 days after such report, the corporation shall present to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of each house of the Legislature, and the chairs of the standing committees of each house of the Legislature having jurisdiction of insurance issues, a plan for implementing the additional ratemaking methods and an outline of any legislation needed to facilitate use of the new methods.~~

~~d. The plan must include a provision that producer commissions paid by the corporation shall not be calculated in such a manner as to include any rate equalization surcharge. However, without regard to the plan to be developed or its implementation, producer commissions paid by the corporation for each account, other than the quota share primary program, shall remain fixed as to percentage, effective rate, calculation, and payment method until January 1, 2004.~~

9.~~10. By January 1, 2004,~~ The corporation shall provide ~~develop~~ a notice to policyholders or applicants that the rates of Citizens Property Insurance Corporation are intended to be higher than the rates of any admitted carrier and providing other information the corporation deems necessary to assist consumers in finding other voluntary admitted insurers willing to insure their property.

(e) If coverage in an account is deactivated pursuant to paragraph (f), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from admitted carriers at their filed rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum

percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability of residential property insurance.

(f)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated in an account on the basis that the conditions giving rise to its activation no longer exist.

(g)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such

annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each assessable insurer, including, if prudent, filing suit to collect such assessment. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be

issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the office shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the office determines that the purchase would endanger or impair the solvency of the insurer.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other

assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

(h) Nothing in this subsection shall be construed to preclude the issuance of residential property insurance coverage pursuant to part VIII of chapter 626.

(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any assessable insurer or its agents or employees, the corporation or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation committee members, or the office or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

1. Any of the foregoing persons or entities for any willful tort;

2. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage;

3. The corporation with respect to issuance or payment of debt; or

4. Any assessable insurer with respect to any action to enforce an assessable insurer's obligations to the corporation under this subsection.

(j) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance

coverage as required by this subsection, paying claims for Florida citizens insured by the corporation, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government. Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered "state bonds" within the meaning of s. 215.58(8). The corporation is not subject to the procurement provisions of chapter 287, and policies and decisions of the corporation relating to incurring debt, levying of assessments and the sale, issuance, continuation, terms and claims under corporation policies, and all services relating thereto, are not subject to the provisions of chapter 120. The corporation is not required to obtain or to hold a certificate of authority issued by the office, nor is it required to participate as a member insurer of the Florida Insurance Guaranty Association. However, the corporation is required to pay, in the same manner as an authorized insurer, assessments pledged by the Florida Insurance Guaranty Association to secure bonds issued or other indebtedness incurred to pay covered claims arising from insurer insolvencies caused by, or proximately related to, hurricane losses. It is the intent of the Legislature that the tax exemptions provided in this paragraph will augment the financial resources of the corporation to better enable the corporation to fulfill its public purposes. Any debt obligations ~~bonds~~ issued by the corporation, their transfer, and the income therefrom,

including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof; however, this exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the corporation.

(k) Upon a determination by the office that the conditions giving rise to the establishment and activation of the corporation no longer exist, the corporation is dissolved. Upon dissolution, the assets of the corporation shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and shall be deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(l)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association shall become policies of the corporation. All obligations, rights, assets and liabilities of the Residential Property and Casualty Joint Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The

corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and shall become policies of the corporation. All obligations, rights, assets, and liabilities of the Florida Windstorm Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsement or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions as may be proper to further evidence the transfers and shall provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents

pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the high-risk account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

~~4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.~~

4.~~5.~~ The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation shall in no way affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the Florida Hurricane Catastrophe Fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the high-risk account of the corporation. Notwithstanding any other provision of law, the coverage provided by the Florida Hurricane Catastrophe Fund to

the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the high-risk account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all Florida Hurricane Catastrophe Fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the Florida Hurricane Catastrophe Fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation.

(m) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or

similar proceeding against the corporation under the laws of this state.

2. No such proceeding shall relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges under subparagraph (c)10., or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, market equalization or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

(n)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file

records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job

performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law will be redacted.

When an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff of and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files.

Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

2. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(b)-(d), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(o) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual

markets and should reduce the potential assessments to be levied on property insurers and policyholders statewide. In furtherance of this intent:

1. The board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association shall be the calculation dated February 2001 and based on November 30, 2000, exposures. In order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate the benchmark probable maximum loss. The reduction or increase in probable maximum loss shall be calculated without taking into account the probable maximum loss attributable to the nonhomestead account.

2. Beginning February 1, 2013 ~~2007~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 25 percent from the benchmark, the board shall reduce the boundaries of the high-risk area eligible for wind-only coverages under this subsection in a manner calculated to reduce

such probable maximum loss to an amount at least 25 percent below the benchmark.

3. Beginning February 1, 2018 ~~2012~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages under this subsection shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.

(p) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the applicable account of the corporation. So long as any bonds, notes, indebtedness, or other financing

obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the

extent not inconsistent with the provisions of the financing documents pertaining to them.

(q) The corporation shall not require the securing of flood insurance as a condition of coverage if the insured or applicant executes a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured in addition to coverage by the corporation, the risk will not be covered for flood damage. A corporation policyholder electing not to secure flood insurance and executing a form as provided herein making a claim for water damage against the corporation shall have the burden of proving the damage was not caused by flooding. Notwithstanding other provisions of this subsection, the corporation may deny coverage to an applicant or insured who refuses to execute the form described herein.

(r) A salaried employee of the corporation who performs policy administration services subsequent to the effectuation of a corporation policy is not required to be licensed as an agent under the provisions of s. 626.112.

(s) The transition to homestead and nonhomestead accounts shall begin on October 1, 2006. A policy issued on or after that date shall be issued in the applicable homestead account or the nonhomestead account, based upon whether the property constitutes homestead property as provided in subparagraph (b)2. A policy in effect on October 1, 2006, shall be placed in the applicable homestead account or the nonhomestead account, based upon whether the property constitutes homestead property as

provided in subparagraph (b)2., upon the first renewal of such policy after October 1, 2006.

(t) Any employee of the corporation whose position is managerial, policymaking, or professional in nature and all members of the corporation's board of governors shall comply with the Code of Ethics for public officers and employers found in ss. 112.311-112.326.

(u) An employee of the corporation shall notify the Division of Insurance Fraud within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by any employee of the corporation.

(v) By February 1, 2007, the corporation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the corporation shall consult with the Office of Insurance Regulation, the Department of Financial Services, and any other party the corporation determines is appropriate. The report shall include findings and recommendations on the feasibility of requiring authorized insurers that issue and service personal and commercial residential policies and commercial nonresidential policies that provide coverage for basic property perils except for the peril of wind to issue and service for a fee personal and commercial residential policies and commercial nonresidential policies

providing coverage for the peril of wind issued by the corporation. The report shall include:

1. The expense savings to the corporation of issuing and servicing such policies as determined through a cost benefit analysis.

2. The expenses and liability to authorized insurers associated with issuing and servicing such policies.

3. The impact on service to policyholders of the corporation relating to issuing and servicing such policies.

4. The impact on the producing agent of the corporation of issuing and servicing such policies.

5. Recommendations as to the amount of the fee that should be paid to authorized insurers for issuing and servicing such policies.

6. The impact issuing and servicing such policies will have on the corporation's number of policies, total insured value, and probable maximum loss.

(w) There shall be no liability on the part of, and no cause of action of any nature shall arise against, producing agents of record or their employees for any action taken by them in the performance of their duties or responsibilities relating to the removal of policies from the corporation. Such immunity only applies to actions that may arise due to differences in coverage or procedures between any take-out insurer and the corporation or for insolvency of any take-out insurer.

(x) The Legislature finds that the total area eligible for the high-risk account of the corporation has a material impact on the availability of wind coverage from the voluntary admitted

market, deficits of the corporation, assessments to be levied on property insurers and policyholders statewide, the ability and willingness of authorized insurers to write wind coverage in the high-risk areas, the probable maximum windstorm losses of the corporation, general commerce in coastal areas, and the overall financial condition of the state. Therefore, in furtherance of these findings and intent:

1. The High Risk Eligibility Panel is created.

2. The members of the panel shall be appointed as follows:

a. The board shall appoint two board members.

b. The Governor shall appoint one member.

c. The Chief Financial Officer shall appoint one member.

d. The Commissioner of Insurance Regulation shall appoint a representative of the office to serve as a member.

e. The President of the Senate shall appoint one member.

f. The Speaker of the House of Representatives shall appoint one member.

Members of the panel must be residents of this state with insurance expertise. Members shall elect a chair and shall serve 3-year terms each. The panel shall operate independently of any state agency and shall be administered by the corporation. The panel shall make an annual report to the President of the Senate and the Speaker of the House of Representatives on or before February 1 of each year recommending the areas that should be eligible for the high-risk account of the corporation. Members shall not receive compensation and are not entitled to receive

reimbursement for per diem and travel expenses as provided in s. 112.061, except for any panel member who is a state employee.

3. The Legislature's intent provided in subparagraphs (a)1. and 2. shall provide guidance for the panel to use in the panel's recommendations to the Legislature required in subparagraph 1. The panel shall consider the following factors in fulfilling its responsibilities under this paragraph:

a. The number of commercial risks in a given area that are unable to find wind coverage from the voluntary admitted market.

b. Reports from members of the mortgage industry indicating difficulty in finding forced placed policies for commercial wind coverage.

c. The number of approved excess and surplus lines carriers certifying an unwillingness to provide commercial wind coverage similar to that approved for use by the office for the voluntary admitted market.

d. Other relevant factors.

The office and the corporation shall provide the panel with any information the panel considers necessary to determine areas eligible for the high-risk account of the corporation. For the purpose of making accurate determinations for areas eligible for the high-risk account of the corporation, the panel may interview and request and receive information from residents of this state in areas impacted by this paragraph, including, but not limited to, insurance agents, insurance companies, actuaries, and other insurance professionals. Upon request of

the panel, the office may conduct public hearings in areas that may be impacted by the panel's recommendations.

4. Notwithstanding other provisions of this paragraph, the panel shall conduct an analysis to determine the areas to be eligible for the high-risk account of the corporation for any county that contains an eligible area extending more than 2 miles from the coast, any coastal county that does not have areas designated as eligible for the high-risk account, and counties with barrier islands whether or not such islands or portions of such islands are currently eligible for the high risk account. The panel shall submit a report, including its analysis, to the office and to the corporation by November 30, 2006. The report shall specify changes to the areas eligible for the high-risk account for such affected counties based on its analysis.

Section 10. Paragraph (b) of subsection (3) of section 627.4035, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

627.4035 Cash payment of premiums; claims.--

(3) All payments of claims made in this state under any contract of insurance shall be paid:

(b) If authorized in writing by the recipient or the recipient's representative, by debit card or any other form of electronic transfer. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient's representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient's representative if the insurer

verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. If the funds are misdirected, the insurer would remain liable for the payment of the claim.

(4) Nothing in this section shall be construed as prohibiting an insurer from limiting its liability under a policy or endorsement providing that loss will be adjusted on the basis of replacement costs to the lesser of:

(a) The limit of liability shown on the policy declarations page;

(b) The reasonable and necessary cost to repair the damaged, destroyed, or stolen covered property; or

(c) The reasonable and necessary cost to replace the damaged, destroyed, or stolen covered property.

Section 11. Subsections (2) and (3) of section 627.7011, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.--

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the law and ordinance coverage limited to 25 percent of the dwelling limit ~~specified in paragraph (1)(b)~~. The rejection or selection of alternative coverage shall be made on a form approved by the office. The form shall fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it will be conclusively presumed that there was

an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy when the policyholder has rejected the coverage specified in this section or has selected alternative coverage. The insurer must provide such policyholder with notice of the availability of such coverage in a form approved by the office at least once every 3 years. The failure to provide such notice constitutes a violation of this code, but does not affect the coverage provided under the policy.

(3) In the event of a loss for which a dwelling ~~or personal property~~ is insured on the basis of replacement costs, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling ~~or property~~.

(6) Insurers shall issue separate checks for living expenses, contents, and casualty proceeds. Checks for living expenses and contents should be issued directly to the policyholder.

Section 12. Effective upon this act becoming a law, section 627.7019, Florida Statutes, is created to read:

627.7019 Standardization of requirements applicable to insurers after natural disasters.--

(1) The commission shall adopt by rule, pursuant to s. 120.54(1)-(3), standardized requirements that may be applied to

insurers as a consequence of a hurricane or other natural disaster. The rules shall address the following areas:

(a) Claims reporting requirements.

(b) Grace periods for payment of premiums and performance of other duties by insureds.

(c) Temporary postponement of cancellations and nonrenewals.

(2) The rules adopted pursuant to this section shall require the office to issue an order within 72 hours after the occurrence of a hurricane or other natural disaster specifying, by line of insurance, which of the standardized requirements apply, the geographic areas in which they apply, the time at which applicability commences, and the time at which applicability terminates.

(3) The commission and the office may not adopt an emergency rule under s. 120.54(4) in conflict with any provision of the rules adopted under this section.

(4) The commission shall initiate rulemaking under this section no later than June 1, 2006.

Section 13. Subsection (5) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.--

(5) Any person having a claim against an insolvent insurer as defined in s. 631.54(6) ~~(5)~~ under the provisions of this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to any person in settlement of a claim arising under the

provisions of this section, the association is not subrogated or entitled to any recovery against the claimant's insurer. The association, however, has the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

Section 14. Paragraph (f) is added to subsection (2) of section 631.181, Florida Statutes, to read:

631.181 Filing and proof of claim.--

(2)

(f) The signed statement required by this section shall not be required on claims for which adequate claims file documentation exists within the records of the insolvent insurer. Claims for payment of unearned premium shall not be required to use the signed statement required by this section if the receiver certifies to the guaranty fund that the records of the insolvent insurer are sufficient to determine the amount of unearned premium owed to each policyholder of the insurer and such information is remitted to the guaranty fund by the receiver in electronic or other mutually agreed-upon format.

Section 15. Subsections (5), (6), (7), and (8) of section 631.54, Florida Statutes, are renumbered as subsections (6), (7), (8), and (9), respectively, and a new subsection (5) is added to that section, to read:

631.54 Definitions.--As used in this part:

(5) "Homeowner's insurance" means personal lines residential property insurance coverage that consists of the type of coverage provided under homeowner's, dwelling, and similar policies for repair or replacement of the insured

structure and contents, which policies are written directly to the individual homeowner. Residential coverage for personal lines as set forth in this section includes policies that provide coverage for particular perils such as windstorm and hurricane coverage but excludes all coverage for mobile homes, renter's insurance, or tenant's coverage. The term "homeowner's insurance" excludes commercial residential policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, and also excludes coverage for the common elements of a homeowners' association.

Section 16. Subsection (1) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.--

(1) There is created a nonprofit corporation to be known as the "Florida Insurance Guaranty Association, Incorporated." All insurers defined as member insurers in s. 631.54(7) ~~(6)~~ shall be members of the association as a condition of their authority to transact insurance in this state, and, further, as a condition of such authority, an insurer shall agree to reimburse the association for all claim payments the association makes on said insurer's behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 17. Paragraph (a) of subsection (1), paragraph (d) of subsection (2), and paragraph (a) of subsection (3) of section 631.57, Florida Statutes, are amended, and paragraph (e) is added to subsection (3) of that section, to read:

631.57 Powers and duties of the association.--

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only the amount of each covered claim that is in excess of $100 and is less than $300,000, except policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim that relates only to the damage to the structure and contents.

3.a.~~2.~~ Notwithstanding subparagraph 2., the obligation under subparagraph 1. for ~~shall include only that amount of each covered claim which is in excess of $100 and is less than $300,000, except with respect to~~ policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, ~~the obligation~~ shall

include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph ~~subparagraph~~ applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(2) The association may:

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. Additionally, the association may enter into such contracts with a municipality, a county, or a legal entity created pursuant to s. 163.01(7)(g) as are necessary in order for the municipality, county, or legal entity to issue bonds under s. 631.695. In

connection with the issuance of any such bonds and the entering into of any such necessary contracts, the association may agree to such terms and conditions as the association deems necessary and proper.

(3)(a) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims, ~~and also~~ to pay the reasonable costs to administer the same, and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not

exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(e)1.a. In addition to assessments otherwise authorized in paragraph (a) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(c).

b. Any emergency assessments authorized under this paragraph shall be levied by the office upon insurers referred to in sub-subparagraph a., upon certification as to the need for such assessments by the board of directors, in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding, in such amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any,

and interest on, and related costs of issuance of, such bonds. The emergency assessments provided for in this paragraph are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the office, or any other party. To the extent bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report

required by s. 631.695(7) shall include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

e. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) shall include emergency assessments imposed under this paragraph.

2. In order to ensure that insurers paying emergency assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall submit a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.

3. An annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

4. Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

Section 18. Section 631.695, Florida Statutes, is created to read:

631.695 Revenue bond issuance through counties or municipalities.--

(1) The Legislature finds:

(a) The potential for widespread and massive damage to persons and property caused by hurricanes making landfall in this state can generate insurance claims of such a number as to render numerous insurers operating within this state insolvent and therefore unable to satisfy covered claims.

(b) The inability of insureds within this state to receive payment of covered claims or to timely receive such payment creates financial and other hardships for such insureds and places undue burdens on the state, the affected units of local government, and the community at large.

(c) In addition, the failure of insurers to pay covered claims or to timely pay such claims due to the insolvency of such insurers can undermine the public's confidence in insurers operating within this state, thereby adversely affecting the stability of the insurance industry in this state.

(d) The state has previously taken action to address these problems by adopting the Florida Insurance Guaranty Association Act, which, among other things, provides a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.

(e) In the wake of the unprecedented destruction caused by various hurricanes that have made landfall in this state, the resultant covered claims, and the number of insurers rendered insolvent thereby, make it evident that alternative programs must be developed to allow the Florida Insurance Guaranty Association to more expeditiously and effectively provide for the payment of covered claims.

(f) It is therefore determined to be in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of the residents of this state and for the protection and preservation of the economic stability of insurers operating in this state and it is declared to be an essential public purpose to permit certain municipalities and counties to take such actions as will provide relief to claimants and policyholders having covered claims against insolvent insurers operating in this state by expediting the handling and payment of covered claims.

(g) To achieve the foregoing purposes, it is proper to authorize municipalities and counties of this state substantially affected by the landfall of a hurricane to issue bonds to assist the Florida Insurance Guaranty Association in

expediting the handling and payment of covered claims of insolvent insurers.

(h) In order to avoid the needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, it is in the best interests of the residents of this state to authorize municipalities and counties severely affected by a hurricane to provide for the payment of covered claims beyond their territorial limits in the implementation of such programs.

(i) It is a paramount public purpose for municipalities and counties substantially affected by the landfall of a hurricane to be able to issue bonds for the purposes described in this section. Such issuance shall provide assistance to residents of those municipalities and counties as well as to other residents of this state.

(2) The governing body of any municipality or county, the residents of which have been substantially affected by a hurricane, may issue bonds to fund an assistance program in conjunction with, and with the consent of, the Florida Insurance Guaranty Association for the purpose of paying claimants' or policyholders' covered claims, as defined in s. 631.54, arising through the insolvency of an insurer, which insolvency is determined by the Florida Insurance Guaranty Association to have been a result of a hurricane, regardless of whether the claimants or policyholders are residents of such municipality or county or the property to which the claim relates is located within or outside the territorial jurisdiction of the municipality or county. The power of a municipality or county to

issue bonds, as described in this section, is in addition to any powers granted by law and may not be abrogated or restricted by any provisions in such municipality's or county's charter. A municipality or county issuing bonds for this purpose shall enter into such contracts with the Florida Insurance Guaranty Association or any entity acting on behalf of the Florida Insurance Guaranty Association as are necessary to implement the assistance program. Any bonds issued by a municipality or county or a combination thereof under this subsection shall be payable from and secured by moneys received by or on behalf of the municipality or county from assessments levied under s. 631.57(3)(a) and assigned and pledged to or on behalf of the municipality or county for the benefit of the holders of the bonds in connection with the assistance program. The funds, credit, property, and taxing power of the state or any municipality or county shall not be pledged for the payment of such bonds.

(3) Bonds may be validated by the municipality or county pursuant to chapter 75. The proceeds of the bonds may be used to pay covered claims of insolvent insurers; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, costs of obtaining credit enhancement or liquidity support, and related administrative expenses; or for such other

purposes related to the financial obligations of the fund as the association may determine. The term of the bonds may not exceed 30 years.

(4) The state covenants with holders of bonds of the assistance program that the state will not take any action that will have a material adverse effect on the holders and will not repeal or abrogate the power of the board of directors of the association to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of the bonds as long as any of the bonds remain outstanding, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of the bonds.

(5) The accomplishment of the authorized purposes of such municipality or county under this section is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. The municipality or county, in performing essential governmental functions in accomplishing its purposes, is not required to pay any taxes or assessments of any kind whatsoever upon any property acquired or used by the county or municipality for such purposes or upon any revenues at any time received by the county or municipality. The bonds, notes, and other obligations of the municipality or county and the transfer of and income from such bonds, notes, and other obligations, including any profits made on the sale of such bonds, notes, and other obligations, are exempt from taxation of any kind by the state or by any political subdivision or other

agency or instrumentality of the state. The exemption granted in this subsection is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(6) Two or more municipalities or counties, the residents of which have been substantially affected by a hurricane, may create a legal entity pursuant to s. 163.01(7)(g) to exercise the powers described in this section as well as those powers granted in s. 163.01(7)(g). References in this section to a municipality or county includes such legal entity.

(7) The association shall issue an annual report on the status of the use of bond proceeds as related to insolvencies caused by hurricanes. The report must contain the number and amount of claims paid. The association shall also include an analysis of the revenue generated from the assessment levied under s. 631.57(3)(a) to pay such bonds. The association shall submit a copy of the report to the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer within 90 days after the end of each calendar year in which bonds were outstanding.

Section 19. No provision of s. 631.57 or s. 631.695, Florida Statutes, shall be repealed until such time as the principal, redemption premium, if any, and interest on all bonds issued under s. 631.695, Florida Statutes, payable and secured from assessments levied under s. 631.57(3)(a), Florida Statutes, have been paid in full or adequate provision for such payment has been made in accordance with the bond resolution or trust indenture pursuant to which the bonds were issued.

Section 20. Paragraph (a) of subsection (1) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.--

(1)(a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

3.a. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, any false, incomplete, or misleading information or written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization

subscriber or provider contract, including any false declaration of homestead status for the purpose of obtaining coverage in a homestead account under s. 627.351(6); or

b. Who knowingly conceals information concerning any fact material to such application.

Section 21. Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.--

(1) TASK FORCE CREATED.--There is created the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.

(2) ADMINISTRATION.--The task force shall be administratively housed within the Office of Insurance Regulation but shall operate independently of any state officer or agency. The office shall provide such administrative support as the task force deems necessary to accomplish its mission and shall provide necessary funding for the task force within the office's existing resources. The Executive Office of the Governor, the Department of Financial Services, the Office of Insurance Regulation, the Department of Highway Safety and Motor Vehicles, and the Department of Community Affairs shall provide substantive staff support for the task force.

(3) MEMBERSHIP.--The members of the task force shall be appointed as follows:

(a) The Governor shall appoint two members who have expertise in financial matters, one of whom is a representative of the mobile or manufactured home industry and one of whom is a representative of insurance consumers.

(b) The Chief Financial Officer shall appoint two members who have expertise in financial matters, one of whom is a representative of a property insurer writing mobile or manufactured homeowners insurance in this state and one of whom is a representative of insurance agents.

(c) The President of the Senate shall appoint one member.

(d) The Speaker of the House of Representatives shall appoint one member.

(e) The Commissioner of Insurance Regulation or his or her designee shall serve as an ex officio voting member of the task force.

(f) The Executive Director of Citizens Property Insurance or his or her designee shall serve as an ex officio voting member of the task force.

(g) The Chief Executive Officer of the Federal Alliance for Safe Homes, Incorporated or his or her designee shall serve as an ex officio voting member of the task force.

Members of the task force shall serve without compensation but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

(4) PURPOSE AND INTENT.--The Legislature recognizes the continued availability of hurricane insurance coverage for mobile and manufactured home owners in this state is essential to the state's economic survival. The Legislature further recognizes hurricane mitigation measures and building codes may reduce the likelihood or amount of damage to mobile or manufactured homes in the event of a hurricane. The Legislature

further recognizes mobile and manufactured homes provide safe and affordable housing to many residents of this state. The purpose of the task force is to make recommendations to the legislative and executive branches of this state's government relating to the creation and maintenance of insurance capacity in the private sector and public sector that is sufficient to ensure that all mobile and manufactured home owners in this state are able to obtain appropriate insurance coverage for hurricane losses and relating to the effectiveness of hurricane mitigation measures for mobile or manufactured homes as further described in this section.

(5) SPECIFIC TASKS.--The task force shall conduct such research and hearings as the task force deems necessary to achieve the purposes specified in subsection (4) and shall develop information on relevant issues, including, but not limited to, the following issues:

(a) Whether this state currently has sufficient hurricane insurance capacity for mobile and manufactured homes to ensure the continuation of a healthy, competitive marketplace, taking into consideration private-sector and public-sector resources.

(b) Identifying the future demands on the hurricane insurance capacity of this state, taking into account population growth, coastal growth, and anticipated future hurricane activity.

(c) Identifying how many mobile or manufactured homes are occupied in this state, how many mobile or manufactured homes are occupied by owners who also own the land to which the unit

is attached, the age or average age of mobile or manufactured homes, the location of such homes, and the size of such homes.

(d) The extent to which the growth in insurance on mobile or manufactured homes in Citizens Property Insurance Corporation is attributable to insufficient insurance capacity.

(e) The extent to which the growth trends of Citizens Property Insurance Corporation create long-term problems for mobile and manufactured home owners in this state and for other persons and businesses that depend on a viable market.

(f) The extent to which insurance discounts, credits, or other rate differentials or reductions in the hurricane insurance deductible for a mobile or manufactured homeowner who takes mitigative measures would increase hurricane insurance capacity for mobile or manufactured homeowners.

(g) The extent hurricane mitigation enhancements to mobile or manufactured homes decreases the likelihood of damage from a hurricane or decreases the amount of damage from a hurricane.

(h) The extent to which the building codes reduce the likelihood of damage or amount of damage to mobile or manufactured homes.

(6) REPORT AND RECOMMENDATIONS.--By January 1, 2007, the task force shall provide a report containing findings relating to the tasks identified in subsection (5) and recommendations consistent with the purposes of this section and also consistent with such findings. The task force shall submit the report to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives. The

task force may also submit such interim reports as the task force deems appropriate.

(7) EXPIRATION.--The task force shall expire on January 2, 2007.

Section 22. By January 1, 2007, the Office of Insurance Regulation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the office shall consult with the Department of Highway Safety and Motor Vehicles, the Department of Community Affairs, the Florida Building Commission, the Florida Home Builders Association, representatives of the mobile and manufactured home industry, representatives of the property and casualty insurance industry, and any other party the office determines is appropriate. The report shall include findings and recommendations on the insurability of attached or free standing structures to residential homes, mobile, or manufactured homes, such as carports or pool enclosures; the increase or decrease in insurance costs associated with insuring such structures; the feasibility of insuring such structures; the impact on homeowners of not having insurance coverage for such structures; the ability of mitigation measures relating to such structures to reduce risk and loss; and such other related information as the office determines is appropriate for the Legislature to consider.

Section 23. (1) By January 15, 2007, the Office of Insurance Regulation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. The report shall include findings and recommendations on requiring residential property insurers to provide an opportunity for policyholders to decrease the monetary amount of a hurricane deductible predicated upon the policyholder demonstrating certifiable and verifiable mitigation measures that reduce hurricane damage. As a part of the report, the office shall address the feasibility of such a requirement and the specific procedures necessary for implementation and include suggested legislation. The report may also include other related information as the office determines is appropriate for the Legislature to consider.

(2) In conducting such research and offering recommendations for the report, the office shall consult with consumers, insurers, builders, wind certification inspectors, organizations dedicated to promoting disaster safety and property loss mitigation, counties, municipalities, and state agencies as well as any other entity that the office determines could provide relevant information.

Section 24. (1) For fiscal year 2006-2007, the sum of $100 million is appropriated from the General Revenue Fund to the Department of Financial Services for the Florida Hurricane

Damage Prevention Endowment as a nonrecurring appropriation for the purposes specified in s. 215.558, Florida Statutes.

(2) The sum of $400 million is appropriated from the General Revenue Fund to the Department of Financial Services as a nonrecurring appropriation for the purposes specified in s. 215.5586, Florida Statutes.

(3) Funds provided in subsections (1) and (2) shall be transferred by the department to the Florida Hurricane Damage Prevention Trust Fund, as created in s. 215.5585, Florida Statutes.

(4) For fiscal year 2006-2007, the recurring sum of $5 million is appropriated to the Department of Financial Services from the Florida Hurricane Damage Prevention Trust Fund, Special Category - Financial Incentives for Hurricane Damage Prevention.

(5) For fiscal year 2006-2007, the nonrecurring sum of $400 million is appropriated to the Department of Financial Services from the Florida Hurricane Damage Prevention Trust Fund, Special Category - Florida Comprehensive Hurricane Damage Mitigation Program. The department may spend up to 1 percent of the funds appropriated to administer the program. Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-2011 fiscal year. At the end of the 2010-2011 fiscal year, any obligated funds for qualified projects that are not yet disbursed shall remain with the department to be used for the purposes of this act. Any unobligated funds of

this appropriation shall revert to the Florida Hurricane Damage Prevention Trust Fund at the end of the 2010-2011 fiscal year.

Section 25. (1) For fiscal year 2006-2007, the sum of $920 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services for transfer to the Citizens Property Insurance Corporation to avoid regular assessments on assessable insurers, as authorized under s. 627.351(6)(b)3.b., Florida Statutes, for the 2005 Plan Year deficit. The board of governors of the corporation shall use appropriated state moneys to fund that portion of the 2005 Plan Year deficit which would result in the levying of regular assessments in the commercial lines, personal lines, and high-risk accounts. The transfer made by the department to the corporation shall be limited to the amount of the total regular assessments that were authorized by law to cover the 2005 Plan Year deficit. Any unused and remaining funds in this appropriation shall revert to the General Revenue Fund.

(2) The corporation shall amortize over a 10-year period any emergency assessments resulting from the 2005 Plan Year deficit.

Section 26. For fiscal year 2006-2007, the sums of $250,000 in recurring funds and $425,000 in nonrecurring funds are appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation for the purpose of carrying out reporting and administrative responsibilities of this act.

Section 27. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Ross offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (2), paragraphs (b), (c) and (d) of subsection (4), paragraph (b) of subsection (5), and paragraph (b) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.--

(2) DEFINITIONS.--As used in this section:

(d) "Losses" means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and shall exclude loss adjustment expenses. "Losses" does not include losses for fair rental value, loss of rent or rental income ~~use~~, or business interruption losses.

(4) REIMBURSEMENT CONTRACTS.--

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent

of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

2. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (6) after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. Notwithstanding any other provisions contained in this section, the board shall make available to those insurers qualifying as limited apportionment companies under s. 627.351(2)(b)3. a contract which cedes to the Fund, after retention, an amount equal to or up to fifty percent of surplus reported by such company as of June 1, 2006. The rate to be charged for this coverage shall be 50 percent rate-on-line which includes one prepaid reinstatement. The minimum retention level that a carrier must retain is 30 percent of surplus as of June 1, 2006. This coverage shall be in addition to all other coverage which may be provided under this section. This provision shall expire May 31, 2007.

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity

of the fund up to a limit of $15 billion for that contract year adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2003, provided the dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the ~~cash~~ balance of the fund as of December 31 as defined by rule which occurred over the prior calendar year.

2. In May before the start of the upcoming contract year and in October during the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity and the projected balance of the fund as of December 31. After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the

board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the board shall:

~~a. First reimburse insurers writing covered policies, which insurers are in full compliance with this section and have petitioned the Office of Insurance Regulation and qualified as limited apportionment companies under s. 627.351(2)(b)3. The amount of such reimbursement shall be the lesser of $10 million or an amount equal to 10 times the insurer's reimbursement premium for the current year. The amount of reimbursement paid under this sub-subparagraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This sub-subparagraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds $2 billion. Only one member of any insurer group may receive reimbursement under this sub-subparagraph.~~

a.~~b. Next~~ Pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year; provided,

entities created pursuant to s. 627.351 shall be further reimbursed in accordance with sub-subparagraph b. ~~c.~~

b.~~c.~~ Thereafter, establish the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient to reimburse entities created pursuant to s. 627.351 based on reimbursable losses exceeding the amounts payable pursuant to sub-subparagraph a. ~~b.~~ for the current contract year.

(5) REIMBURSEMENT PREMIUMS.--

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each $1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, ~~a factor providing for more rapid cash buildup in the fund until the fund capacity for a single hurricane season is fully funded,~~ and other such factors deemed by the board to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula shall include a

factor of 25 percent of the fund's actuarially indicated premium in order to provide for more rapid cash buildup in the fund. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(6) REVENUE BONDS.--

(a) General provisions.--

1. Upon the occurrence of a hurricane and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the board may take the necessary steps under paragraph (c) or paragraph (d) for the issuance of revenue bonds for the benefit of the fund. The proceeds of such revenue bonds may be used to make reimbursement payments under reimbursement contracts; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge or authorize the corporation to pledge all or a portion of all revenues under subsection (5) and under paragraph (b) to secure such revenue bonds and the board may execute such agreements between the board and the issuer of any revenue bonds and providers of other financing arrangements under paragraph (7)(b) as the board deems necessary to evidence, secure, preserve, and protect such pledge. If reimbursement premiums

received under subsection (5) or earnings on such premiums are used to pay debt service on revenue bonds, such premiums and earnings shall be used only after the use of the moneys derived from assessments under paragraph (b). The funds, credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of such bonds. The board may also enter into agreements under paragraph (c) or paragraph (d) for the purpose of issuing revenue bonds in the absence of a hurricane upon a determination that such action would maximize the ability of the fund to meet future obligations.

2. The Legislature finds and declares that the issuance of bonds under this subsection is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a hurricane. ~~Revenue bonds may not be issued under this subsection until validated under chapter 75. The validation of at least the first obligations incurred pursuant to this subsection shall be appealed to the Supreme Court, to be handled on an expedited basis.~~

(b) Emergency assessments.--

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct

premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written ~~future~~ premium ~~collections~~ and is subject to annual adjustments by the board ~~to reflect changes in premiums subject to assessments collected under this subparagraph~~ in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as ~~until~~ the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. ~~With respect to each insurer collecting premiums that are subject to the assessment, the insurer shall collect the assessment at the same time as it collects the premium payment for each policy and shall remit the assessment collected to the fund or corporation as provided in the order issued by the Office of Insurance Regulation.~~ The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The

Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments

under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2010 ~~2007~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2010 ~~2007~~.

Amendment No. (for drafter's use only)

Section 2. Section 215.558, Florida Statutes, is created to read:

215.558 Florida Hurricane Damage Prevention Endowment.--

(1) PURPOSE AND INTENT.--The purpose of this section is to provide a continuing source of funding for financial incentives to encourage residential property owners of this state to retrofit their properties to make them less vulnerable to hurricane damage, to help decrease the cost of residential property and casualty insurance, and to provide matching funds to local governments and nonprofit entities for projects that will reduce hurricane damage to residential properties. It is the intent of the Legislature that this section be construed liberally to effectuate its purpose.

(2) DEFINITIONS.--As used in this section:

(a) "Board" means the State Board of Administration.

(b) "Corpus" means the money that has been appropriated to the endowment by the 2006 Legislature, together with any amounts subsequently appropriated to the endowment that are specifically designated as contributions to the corpus and any grants, gifts, or donations to the endowment that are specifically designated as contributions to the corpus.

(c) "Earnings" means any money in the endowment in excess of the corpus, including any income generated by investments, any increase in the market value of investments net of decreases in market value, and any appropriations, grants, gifts, or donations to the endowment not specifically designated as contributions to the corpus.

(d) "Endowment" means the Florida Hurricane Damage Prevention Endowment created by this section.

(e) "Program administrator" means the Department of Financial Services.

(3) ADMINISTRATION.--

(a) The board shall invest endowment assets as provided in this section.

(b) The board may invest and reinvest funds of the endowment in accordance with s. 215.47 and consistent with board policy.

(c) The investment objective shall be long-term preservation of the value of the corpus and a specified regular annual cash outflow for appropriation, as nonrecurring revenue, for the purposes specified in subsection (4).

(d) In accordance with s. 215.44, the board shall report on the financial status of the endowment in its annual investment report to the Legislature.

(e) Costs and fees of the board for investment services shall be deducted from the assets of the endowment.

(4) FINANCIAL INCENTIVES FOR RESIDENTIAL HURRICANE DAMAGE PREVENTION ACTIVITIES.--

(a) Not less than 80 percent of the net earnings of the endowment shall be expended for financial incentives to residential property owners as described in paragraph (b), and no more than the remainder of the net earnings of the endowment shall be expended for matching fund grants to local governments and nonprofit entities for projects that will reduce hurricane damage to residential properties as described in paragraph (c). Any funds authorized for expenditure but not expended for these purposes shall be returned to the endowment.

(b)1. The program administrator, by rule, shall establish a request for a proposal process to annually solicit proposals from lending institutions under which the lending institution will provide interest-free loans to homestead property owners to pay for inspections of homestead property to determine what

mitigation measures are needed and for improvements to existing residential properties intended to reduce the homestead property's vulnerability to hurricane damage, in exchange for funding from the endowment.

2. In order to qualify for funding under this paragraph, an interest-free loan program must include an inspection of homestead property to determine what mitigation measures are needed, a means for verifying that the improvements to be paid for from loan proceeds have been demonstrated to reduce a homestead property's vulnerability to hurricane damage, and a means for verifying that the proceeds were actually spent on such improvements. The program must include a method for awarding loans according to the following priorities:

a. The highest priority must be given to single-family owner-occupied homestead dwellings, insured at $500,000 or less, located in the areas designated as high-risk areas for purposes of coverage by the Citizens Property Insurance Corporation.

b. The next highest priority must be given to single-family owner-occupied homestead dwellings, insured at $500,000 or less, covered by the Citizens Property Insurance Corporation, wherever located.

c. The next highest priority must be given to single-family owner-occupied homestead dwellings, insured at $500,000 or less, that are more than 40 years old.

d. The next highest priority must be given to all other single-family owner-occupied homestead dwellings insured at $500,000 or less.

3. The program administrator shall evaluate proposals based on the following factors:

a. The degree to which the proposal meets the requirements of subparagraph 2.

b. The lending institution's plan for marketing the loans.

c. The anticipated number of loans to be granted relative to the total amount of funding sought.

4. The program administrator shall annually solicit proposals from local governments and nonprofit entities for projects that will reduce hurricane damage to homestead properties. The program administrator may provide up to 50 percent of the funding for such projects. The projects may include educational programs, repair services, property inspections, and hurricane vulnerability analyses and such other projects as the program administrator determines to be consistent with the purposes of this section.

Section 3. Section 215.5586, Florida Statutes, is created to read:

215.5586 Florida Comprehensive Hurricane Damage Mitigation Program.--There is established within the Department of Financial Services the Florida Comprehensive Hurricane Damage Mitigation Program. The program shall be administered by an individual with prior executive experience in the private sector in the areas of insurance, business, or construction. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that shall include the following:

(1) WIND CERTIFICATION AND HURRICANE MITIGATION INSPECTIONS.—

(a) Free home-retrofit inspections of site-built, residential property, including up to four-family residential units, shall be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The Department of Financial Services shall

establish a request for proposals to solicit proposals from wind certification entities to provide at no cost to homeowners wind certification and hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the mitigation features.

3. Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

(b) To qualify for selection by the department as a provider of wind certification and hurricane mitigation inspections the entity must, at a minimum, comply with the following:

1. Utilize wind certification and hurricane mitigation inspectors who meet the following criteria:

a. Have prior experience in residential construction or inspection and how have received specialized training in hurricane mitigation procedures;

b. Have undergone drug testing and background checks; and

c. Have been certified, in a manner satisfactory to the department, to conduct the inspections.

2. Provide a quality assurance program including a reinspection component.

(2) GRANTS.--Financial grants shall be used to encourage site-built, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) To be eligible for a grant a residential property must:

1. Have been granted a homestead exemption under chapter 196.

2. Be a dwelling with an insured value of $500,000 or less.

3. Have undergone an acceptable wind certification and hurricane mitigation inspection.

4. If par of multi-family residential units, receive a grant only if all homeowners participate and the total number of units does not exceed four.

(b) All grants must be matched on a dollar-for-dollar basis for a total of $10,000 for the mitigation project with the state's contribution capped at $5,000.

(c) The program shall create a process in which mitigation contractors agree to participate and seek reimbursement from the state and homeowners select from a list of participating contractors. All mitigation must be based upon the securing of all required local permits and inspections. Mitigation projects are subject to random reinspection of up to at least 10 percent of all projects.

(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to eligible residential property.

(3) LOANS.--Financial incentives shall be provided as authorized by s. 215.558.

(4) EDUCATION AND CONSUMER AWARENESS.--Multimedia public education, awareness, and advertising efforts designed to

specifically address mitigation techniques shall be employed, as well as a component to support ongoing consumer resources and referral services.

(5) ADVISORY COUNCIL.--There is created an advisory council to provide advice and assistance to the program administrator with regard to its administration of the program. The advisory council shall consist of:

(a) A representative of lending institutions, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Bankers Association.

(b) A representative of residential property insurers, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Insurance Council.

(c) A representative of home builders, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Home Builders Association.

(d) A faculty member of a state university selected by the Financial Services Commission who is an expert in hurricane-resistant construction methodologies and materials.

(e) Two members of the House of Representatives selected by the Speaker of the House of Representatives.

(f) Two members of the Senate selected by the President of the Senate.

(g) The Chief Executive Officer of the Federal Alliance for Safe Homes, Inc., or his or her designee.

(h) The senior officer of the Florida Hurricane Catastrophe Fund.

(i) The executive director of Citizens Property Insurance Corporation.

(j) The director of the Division of Emergency Management of the Department of Community Affairs.

Members appointed under paragraphs (a)-(d) shall serve at the pleasure of the Financial Services Commission. Members appointed under paragraphs (e) and (f) shall serve at the pleasure of the appointing officer. All other members shall serve voting ex officio. Members of the advisory council shall serve without compensation but may receive reimbursement as provided in s. 112.061 for per diem and travel expenses incurred in the performance of their official duties.

(6) RULES.--The Department of Financial Services shall adopt rules pursuant to ss. 120.536(1) and 120.54 governing the Florida Comprehensive Hurricane Damage Mitigation Program.

Section 4. Section 215.559, Florida Statutes, is amended to read:

215.559 Hurricane Loss Mitigation Program.--

(1) There is created a Hurricane Loss Mitigation Program. The Legislature shall annually appropriate $10 million of the moneys authorized for appropriation under s. 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the Department of Community Affairs for the purposes set forth in this section.

(2)(a) Seven million dollars in funds provided in subsection (1) shall be used for programs to improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; cooperative programs with local governments and the Federal Government; and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.

(b) Three million dollars in funds provided in subsection (1) shall be used to retrofit existing facilities used as public

hurricane shelters. The department must prioritize the use of these funds for projects included in the September 1, 2000, version of the Shelter Retrofit Report prepared in accordance with s. 252.385(3), and each annual report thereafter. The department must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize use of state funds.

~~(3) By the 2006-2007 fiscal year, the Department of Community Affairs shall develop a low-interest loan program for homeowners and mobile home owners to retrofit their homes with fixtures or apply construction techniques that have been demonstrated to reduce the amount of damage or loss due to a hurricane. Funding for the program shall be used to subsidize or guaranty private-sector loans for this purpose to qualified homeowners by financial institutions chartered by the state or Federal Government. The department may enter into contracts with financial institutions for this purpose. The department shall establish criteria for determining eligibility for the loans and selecting recipients, standards for retrofitting homes or mobile homes, limitations on loan subsidies and loan guaranties, and other terms and conditions of the program, which must be specified in the department's report to the Legislature on January 1, 2006, required by subsection (8). For the 2005-2006 fiscal year, the Department of Community Affairs may use up to $1 million of the funds appropriated pursuant to paragraph (2)(a) to begin the low-interest loan program as a pilot project in one or more counties. The Department of Financial Services, the Office of Financial Regulation, the Florida Housing Finance Corporation, and the Office of Tourism, Trade, and Economic Development shall assist the Department of Community Affairs in establishing the program and pilot project. The department may~~

~~use up to 2.5 percent of the funds appropriated in any given fiscal year for administering the loan program. The department may adopt rules to implement the program.~~

(3)~~(4)~~ Forty percent of the total appropriation in paragraph (2)(a) shall be used to inspect and improve tie-downs for mobile homes. Within 30 days after the effective date of that appropriation, the department shall contract with a public higher educational institution in this state which has previous experience in administering the programs set forth in this subsection to serve as the administrative entity and fiscal agent pursuant to s. 216.346 for the purpose of administering the programs set forth in this subsection in accordance with established policy and procedures. The administrative entity working with the advisory council set up under subsection (6) shall develop a list of mobile home parks and counties that may be eligible to participate in the tie-down program.

(4)~~(5)~~ Of moneys provided to the Department of Community Affairs in paragraph (2)(a), 10 percent shall be allocated to a Type I Center within the State University System dedicated to hurricane research. The Type I Center shall develop a preliminary work plan approved by the advisory council set forth in subsection (6) to eliminate the state and local barriers to upgrading existing mobile homes and communities, research and develop a program for the recycling of existing older mobile homes, and support programs of research and development relating to hurricane loss reduction devices and techniques for site-built residences. The State University System also shall consult with the Department of Community Affairs and assist the department with the report required under subsection (8).

(5)~~(6)~~ The Department of Community Affairs shall develop the programs set forth in this section in consultation with an

advisory council consisting of a representative designated by the Chief Financial Officer, a representative designated by the Florida Home Builders Association, a representative designated by the Florida Insurance Council, a representative designated by the Federation of Manufactured Home Owners, a representative designated by the Florida Association of Counties, and a representative designated by the Florida Manufactured Housing Association.

(6) ~~(7)~~ Moneys provided to the Department of Community Affairs under this section are intended to supplement other funding sources of the Department of Community Affairs and may not supplant other funding sources of the Department of Community Affairs.

(7) ~~(8)~~ On January 1st of each year, the Department of Community Affairs shall provide a full report and accounting of activities under this section and an evaluation of such activities to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate.

(8) ~~(9)~~ This section is repealed June 30, 2011.

Section 5. Subsections (1) and (2) of section 626.918, Florida Statutes, are amended to read:

626.918 Eligible surplus lines insurers.--

(1) A ~~No~~ surplus lines agent may not ~~shall~~ place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer, except as permitted under subsections (5) and (6).

(2) An ~~No~~ unauthorized insurer may not ~~shall~~ be or become an eligible surplus lines insurer unless made eligible by the office in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by the Florida Surplus Lines Service Office.~~:~~

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed and must have been such an insurer for not less than the 3 years next preceding or must be the wholly owned subsidiary of such authorized insurer or must be the wholly owned subsidiary of an already eligible surplus lines insurer as to the kind or kinds of insurance proposed for a period of not less than the 3 years next preceding. However, the office may waive the 3-year requirement if the insurer provides a product or service not readily available to the consumers of this state or has operated successfully for a period of at least 1 year next preceding and has capital and surplus of not less than $25 million.~~:~~

(c) Before granting eligibility, the requesting surplus lines agent or the insurer shall furnish the office with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate (in the case of statements originally made in the currencies of other countries) then-current and shown in the statement, and with such additional information relative to the insurer as the office may request.~~:~~

(d)1.a. The insurer must have and maintain surplus as to policyholders of not less than $15 million; in addition, an alien insurer must also have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the office to be reasonably adequate, in an amount not less than $5.4 million. Any such surplus as to policyholders or trust fund shall be represented

by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625 provided, however, that in the case of an alien insurance company, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States financial institution, as defined in subparagraph 2., may be used to fund the trust.~~;~~

b.~~2.~~ For those surplus lines insurers that were eligible on January 1, 1994, and that maintained their eligibility thereafter, the required surplus as to policyholders shall be:

(I)~~a.~~ On December 31, 1994, and until December 30, 1995, $2.5 million.

(II)~~b.~~ On December 31, 1995, and until December 30, 1996, $3.5 million.

(III)~~c.~~ On December 31, 1996, and until December 30, 1997, $4.5 million.

(IV)~~d.~~ On December 31, 1997, and until December 30, 1998, $5.5 million.

(V)~~e.~~ On December 31, 1998, and until December 30, 1999, $6.5 million.

(VI)~~f.~~ On December 31, 1999, and until December 30, 2000, $8 million.

(VII)~~g.~~ On December 31, 2000, and until December 30, 2001, $9.5 million.

(VIII)~~h.~~ On December 31, 2001, and until December 30, 2002, $11 million.

(IX)~~i.~~ On December 31, 2002, and until December 30, 2003, $13 million.

(X)~~j.~~ On December 31, 2003, and thereafter, $15 million.

c.~~3.~~ The capital and surplus requirements as set forth in sub-subparagraph b. ~~subparagraph 2.~~ do not apply in the case of an insurance exchange created by the laws of individual states, where the exchange maintains capital and surplus pursuant to the requirements of that state, or maintains capital and surplus in an amount not less than $50 million in the aggregate. For an insurance exchange which maintains funds in the amount of at least $12 million for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus in an amount not less than $3 million. If the insurance exchange does not maintain funds in the amount of at least $12 million for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements set forth in sub-subparagraph b. ~~subparagraph 2.;~~

d.~~4.~~ A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer as set forth in its holding company registration statement, as set forth in s. 628.801 and rules adopted thereunder, may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, subject to the requirement that the surplus lines insurer shall at all times be in compliance with the requirements of chapter 625.

The election shall be submitted to the office and shall be effective upon the office's being satisfied that the requirements of sub-subparagraph d. ~~subparagraph 4.~~ have been

met. The initial date of election shall be the date of office approval. The election approval application shall be on a form adopted by commission rule. The office may approve an election form submitted pursuant to sub-subparagraph d. ~~subparagraph 4.~~ only if it was on file with the former Department of Insurance before February 28, 1998.~~;~~

2. For purposes of letters of credit under subparagraph 1., the term "qualified United States financial institution" means an institution that:

a. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state.

b. Is regulated, supervised, and examined by authorities of the United States or any state having regulatory authority over banks and trust companies.

c. Has been determined by the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the office.

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.~~;~~

(f) The insurer must be eligible, as for authority to transact insurance in this state, under s. 624.404(3).~~; and~~

(g) This subsection does not apply as to unauthorized insurers made eligible under s. 626.917 as to wet marine and aviation risks.

Amendment No. (for drafter's use only)

Section 6. Paragraph (j) is added to subsection (2) of section 627.062, Florida Statutes, and subsection (5) is amended and subsections (9) and (10) are added to that section, to read:

627.062 Rate standards.--

(2) As to all such classes of insurance:

(j) Effective January 1, 2007, notwithstanding any other provision of this section:

1. With respect to any residential property insurance subject to regulation under this section, a rate filing, including, but not limited to, any rate changes, rating factors, territories, classification, discounts, and credits, with respect to any policy form, including endorsements issued with the form, that results in an overall average statewide premium increase or decrease of no more than 5 percent above or below the premium that would result from the insurer's rates then in effect shall not be subject to a determination by the office that the rate is excessive or unfairly discriminatory except as provided in subparagraph 3., or any other provision of law, provided all changes specified in the filing do not result in an overall premium increase of more than 10 percent for any one territory, for reasons related solely to the rate change. As used in this subparagraph, the term "insurer's rates then in effect" includes only rates that have been lawfully in effect under this section or rates that have been determined to be lawful through administrative proceedings or judicial proceedings.

2. An insurer may not make filings under this paragraph with respect to any policy form, including endorsements issued with the form, if the overall premium changes resulting from such filings exceed the amounts specified in this paragraph in any 12-month period. An insurer may proceed under other

provisions of this section or other provisions of law if the insurer seeks to exceed the premium or rate limitations of this paragraph.

3. This paragraph does not affect the authority of the office to disapprove a rate as inadequate or to disapprove a filing for the unlawful use of unfairly discriminatory rating factors that are prohibited by the laws of this state. An insurer electing to implement a rate change under this paragraph shall submit a filing to the office at least 30 days prior to the effective date of the rate change. The office shall have 30 days after the filing's submission to review the filing and determine if the rate is inadequate or uses unfairly discriminatory rating factors. Absent a finding by the office within such 30-day period that the rate is inadequate or that the insurer has used unfairly discriminatory rating factors, the filing is deemed approved. If the office finds during the 30-day period that the filing will result in inadequate premiums or otherwise endanger the insurer's solvency, the office shall suspend the rate decrease. If the insurer is implementing an overall rate increase, the results of which continue to produce an inadequate rate, such increase shall proceed pending additional action by the office to ensure the adequacy of the rate.

4. This paragraph does not apply to rate filings for any insurance other than residential property insurance.

The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

(5) With respect to a rate filing involving coverage of the type for which the insurer is required to pay a

reimbursement premium to the Florida Hurricane Catastrophe Fund, the insurer may fully recoup in its property insurance premiums any reimbursement premiums paid to the Florida Hurricane Catastrophe Fund, together with ~~reasonable~~ costs of other reinsurance consistent with prudent business practices and sound actuarial principles, but may not recoup reinsurance costs that duplicate coverage provided by the Florida Hurricane Catastrophe Fund. The burden is on the office to establish that any costs of other reinsurance are in excess of amounts consistent with prudent business practies and sound actuarial principles. An insurer may not recoup more than 1 year of reimbursement premium at a time. Any under-recoupment from the prior year may be added to the following year's reimbursement premium and any over-recoupment shall be subtracted from the following year's reimbursement premium.

(9) Notwithstanding any other provision of this section, any rate filing or applicable portion of the rate filing that includes the peril of wind within the boundary of the area covered by the high-risk account of the Citizens Property Insurance Corporation shall be deemed approved upon submission to the office if the filing or the applicable portion of the filing requests approval of a rate that is less than the approved rate for similar risks insured in the high-risk account of the corporation unless the office determines that such rate is inadequate or unfairly discriminatory as provided in subsection (2).

(10)(a) Beginning January 1, 2007, the office shall annually provide a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leader of each house of the Legislature, and the chairs of the standing committees of each house of the Legislature having

jurisdiction over insurance issues, specifying the impact of flexible rate regulation under paragraph (2)(j) on the degree of competition in insurance markets in this state.

(b) The report shall include a year-by-year comparison of the number of companies participating in the market for each class of insurance and the relative rate levels. The report shall also specify:

1. The number of rate filings made under paragraph (2)(j), the rate levels under those filings, and the market share affected by those filings.

2. The number of filings made on a file and use basis, the rate levels under those filings, and the market share affected by those filings.

3. The number of filings made on a use and file basis, the rate levels under those filings, and the market share affected by those filings.

4. Recommendations to promote competition in the insurance market and further protect insurance consumers.

Section 7. Paragraph (c) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.--

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

(c) With respect to a rate filing under s. 627.062, an insurer may employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable to determine hurricane loss factors for use in a rate filing under s. 627.062. Such findings and factors are admissible and relevant in consideration of a rate filing by the office or in any arbitration or administrative or judicial

review only if the office and the consumer advocate appointed pursuant to s. 627.0613 have a reasonable opportunity to review ~~access to~~ all of the basic assumptions and factors that were used in developing the actuarial methods, principles, standards, models, or output ranges. After review of the specific models by the commission, the office and the consumer advocate may not pose any questions generated from their respective reviews that duplicate or compromise the conclusions of the commission relative to the accuracy or reliability of the models in producing hurricane loss factors for use in a rate filing under s. 627.062~~, and are not precluded from disclosing such information in a rate proceeding~~.

Section 8. Section 627.06281, Florida Statutes, is amended to read:

627.06281 Public hurricane loss projection model; reporting of data by insurers.--

(1) Within 30 days after a written request for loss data and associated exposure data by the office or a type I center within the State University System established to study mitigation, residential property insurers and licensed rating and advisory organizations that compile residential property insurance loss data shall provide loss data and associated exposure data for residential property insurance policies to the office or to a type I center within the State University System established to study mitigation, as directed by the office, for the purposes of developing, maintaining, and updating a public model for hurricane loss projections. The loss data and associated exposure data provided shall be in writing.

(2) The office may not use the public model for hurricane loss projection referred to in subsection (1) for any purpose under s. 627.062 or s. 627.351 until the model has been

submitted to the Florida Commission on Hurricane Loss Projection Methodology for review under s. 627.0628 and the commission has found the model to be accurate and reliable pursuant to the same process and standards as the commission uses for the review of other hurricane loss projection models.

Section 9. Subsection (2) of section 627.0645, Florida Statutes, is amended to read:

627.0645 Annual filings.--

(2)(a) Deviations filed by an insurer to any rating organization's base rate filing are not subject to this section.

(b) The office, after receiving a request to be exempted from the provisions of this section, may, for good cause due to insignificant numbers of policies in force or insignificant premium volume, exempt a company, by line of coverage, from filing rates or rate certification as required by this section.

(c) The office, after receiving a request to be exempted from the provisions of this section, shall exempt a company with less than 500 residential homeowner or mobile homeowner policies from filing rates or rate certification as required by this section.

Section 10. Subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(6) CITIZENS PROPERTY INSURANCE CORPORATION.--

(a)1.a. The Legislature finds that actual and threatened catastrophic losses to property in this state from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed. It is in the public interest and a public purpose to assist in ensuring ~~assuring~~ that homestead property in the state is insured so as to facilitate the remediation, reconstruction, and

replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare; to the economy of the state; and to the revenues of the state and local governments needed to provide for the public welfare. It is necessary, therefore, to provide property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends by this subsection that property insurance be provided and that it continues, as long as necessary, through an entity organized to achieve efficiencies and economies, while providing service to policyholders, applicants, and agents that is no less than the quality generally provided in the voluntary market, all toward the achievement of the foregoing public purposes. Because it is essential for the corporation to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

b. The Legislature finds and declares that:

(I) The commitment of the state, as expressed in sub-subparagraph a., to providing a means of ensuring the availability of property insurance through a residual market mechanism is hereby reaffirmed.

(II) Despite legislative efforts to ensure that the residual market for property insurance is self-supporting to the greatest reasonable extent, residual market policyholders are to some degree subsidized by the general public through assessments on owners of property insured in the voluntary market and their

insurers and through the potential use of general revenues of the state to eliminate or reduce residual market deficits.

(III) The degree of such subsidy is a matter of public policy. It is the intent of the Legislature to better control the subsidy through at least the following means:

(A) Restructuring the residual market mechanism to provide separate treatment of homestead and nonhomestead properties, with the intent of continuing to provide an insurance program with limited subsidies for homestead properties while providing a nonsubsidized insurance program for nonhomestead properties.

(B) Redefining the concept of rate adequacy in the subsidized residual market with the intent of ensuring a rate structure that will enable the subsidized residual market to be self-supporting except in the event of hurricane losses of a legislatively specified magnitude. It is the intent of the Legislature that the funding of the subsidized residual market be structured to be self-supporting up to the point of its 100-year probable maximum loss and that the funding be structured to make reliance on assessments or other sources of public funding necessary only in the event of a 100-year probable maximum loss or larger loss.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known, as of July 1, 2002, as the Citizens Property Insurance Corporation. The corporation shall provide insurance for homesteaded residential property and may provide insurance for residential and commercial property, for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the office. The plan is subject to continuous review by the office. The

office may, by order, withdraw approval of all or part of a plan if the office determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies, and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It also is intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An authorized insurer's assessment liability shall begin on the first day of the

calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and shall terminate 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into four ~~three~~ separate accounts as follows:

(I) Three separate homestead accounts that may provide coverage only for homestead properties. The term "homestead property" means a residential property that has been granted a homestead exemption under chapter 196. The term also includes a property that is qualified for such exemption but has not applied for the exemption as of the date of issuance of the policy, provided the policyholder obtains the exemption within 1 year after initial issuance of the policy. The term also includes an owner-occupied mobile or manufactured home as defined in s. 320.01 permanently affixed to real property regardless of whether the owner of the mobile or manufactured home is also the owner of the land on which the mobile or manufactured home is permanently affixed. However, the term does not include a mobile home that is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and is not owner-occupied. For the purposes of this sub-sub-subparagraph, the term "homestead property" also includes property covered by tenant's insurance; commercial lines residential policies; any county, district, or municipal hospital, or hospital licensed by any not-for-profit corporation which is qualified under s. 501(c)(3) of the United States Internal Revenue Code; and continuing care retirement

communities certified under chapter 651. The accounts providing coverage only for homestead properties are:

(A) ~~(I)~~ A personal lines account for personal residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for such policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(B) ~~(II)~~ A commercial lines account for commercial residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide coverage for basic property perils on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for such policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(C) ~~(III)~~ A high-risk account for personal residential policies and commercial residential ~~and commercial nonresidential~~ property policies issued by the corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The high-risk account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral,

bordered on the west by the Banana River, and bordered on the north by Federal Government property. The office may remove territory from the area eligible for wind-only and quota share coverage if, after a public hearing, the office finds that authorized insurers in the voluntary market are willing and able to write sufficient amounts of personal and commercial residential coverage for all perils in the territory, including coverage for the peril of wind, such that risks covered by wind-only policies in the removed territory could be issued a policy by the corporation in either the personal lines or commercial lines account without a significant increase in the corporation's probable maximum loss in such account. Removal of territory from the area eligible for wind-only or quota share coverage does not alter the assignment of wind coverage written in such areas to the high-risk account.

(II)(A) A separate nonhomestead account for commercial nonresidential property policies and for all properties that otherwise meet all of the criteria for eligibility for coverage within one of the three homestead accounts described in sub-sub-subparagraph (I) but that do not meet the definition of homestead property specified in sub-sub-subparagraph (I). The nonhomestead account shall provide the same types of coverage as are provided by the three homestead accounts, including wind-only coverage in the high-risk account area. In order to be eligible for coverage in the nonhomestead account, at the initial issuance of the policy and at renewal the property owner shall provide the corporation with a sworn affidavit stating that the property has been rejected for coverage by at least three authorized insurers and at least three surplus lines insurers.

(B) An authorized insurer or approved insurer as defined in s. 626.914(2) may provide coverage to a nonhomestead property owner on an individual risk rate basis. Rates and forms of an authorized insurer for nonhomestead properties are not subject to ss. 627.062 and 627.0629, except s. 627.0629(2)(b). Such rates and forms are subject to all other applicable provisions of this code and rules adopted under this code. During the course of an insurer's market conduct examination, the office may review the rate for any nonhomestead property to determine if such rate is inadequate or unfairly discriminatory. Rates on nonhomestead property may be found inadequate by the office if they are clearly insufficient, together with the investment income attributable to the insurer, to sustain projected losses and expenses in the class of business to which such rates apply. Rates on nonhomestead property may also be found inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks. Rates on nonhomestead property may be found to be unfairly discriminatory as to a risk or group of risks by the office if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks. A rating plan, including discounts, credits, or surcharges on nonhomestead property, may also be found to be unfairly discriminatory if the plan fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program adjusted pursuant to s. 627.0625. The office may order an insurer to discontinue using a rate for new policies or upon renewal of a policy if the office finds the rate to be

inadequate or unfairly discriminatory. Insurers shall maintain records and documentation relating to rates and forms subject to this sub-sub-sub-subparagraph for a period of at least 5 years after the effective date of the policy.

b. The three separate homestead accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. When the financing obligations are no longer outstanding, in accordance with the terms of the corresponding financing documents, the corporation may use a single homestead account for all revenues, assets, liabilities, losses, and expenses of the corporation. All revenues, assets, liabilities, losses, and expenses attributable to the nonhomestead account shall be maintained separately.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association shall have a claim against, and recourse to, the accounts referred to in sub-sub-sub-subparagraphs ~~sub-sub-subparagraphs~~ a.(I)(A) and (B)~~(II)~~ and shall have no claim against, or recourse to, the account referred to in sub-sub-sub-subparagraph ~~sub-sub-subparagraph~~ a.(I)(C)~~(III)~~. Creditors of the Florida Windstorm Underwriting Association shall have a claim against, and recourse to, the account referred to in sub-sub-sub-subparagraph ~~sub-sub-subparagraph~~ a.(I)(C)~~(III)~~ and shall have no claim against, or recourse to, the accounts referred to in sub-sub-sub-subparagraphs ~~sub-sub-subparagraphs~~ a.(I)(A) and (B)~~(II)~~.

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. No part of the income of the corporation may inure to the benefit of any private person.

3. With respect to a deficit in any of the homestead accounts ~~an account~~:

a. When the deficit incurred in a particular calendar year is not greater than 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (g) and assessable insureds.

b. When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (g) and on assessable insureds in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining deficit shall be recovered through emergency assessments under sub-subparagraph d.

c. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. shall be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the year in which the deficit is incurred ~~assessment~~ bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment

percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. shall be paid as required by the corporation's plan of operation and paragraph (g). Any assessment levied by the corporation on limited apportionment companies may be paid to the corporation by such companies over a time period not to exceed 12 months. Notwithstanding any other provision in this subsection, the aggregate amount of a regular assessment levied in connection with a deficit incurred in a particular calendar year shall be reduced by the aggregate amount of the Citizens Property Insurance Corporation policyholder surcharge imposed under subparagraph (c)10. Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

d. Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments under sub-subparagraph a. or sub-subparagraph b., the board shall levy, after verification by the office, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable insurers and

the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessments so collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and shall be held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the

aggregate statewide direct written premium for subject lines of business and for all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, Citizens policyholder ~~market equalization~~ surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (g), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a., sub-subparagraph b., or subparagraph (g)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness

pursuant to the documents governing such bonds or other indebtedness.

f. As used in this subsection, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverage on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1) other than insurance on mobile homes used as permanent dwellings.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and shall report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and shall assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

4. With respect to a deficit in the nonhomestead account or to any cash flow shortfall that the board determines will create an inability for the nonhomestead account to pay claims when due:

a. The board shall levy an immediate assessment against the premium of each nonhomestead account policyholder, expressed as a uniform percentage of the premium for the policy then in effect. The maximum amount of such assessment is 100 percent of such premium.

b. If the assessment under sub-subparagraph a. is insufficient to enable the account to pay claims and eliminate the deficit in the account, the board may levy an additional assessment to be collected at the time of any issuance or renewal of a nonhomestead account policy during the 1-year period following the levy of the assessment under sub-subparagraph a., expressed as a uniform percentage of the premium for the policy for the forthcoming policy period. The maximum amount of such assessment is 100 percent of such premium.

c. If the assessments under sub-subparagraphs a. and b. are insufficient to enable the account to pay claims and eliminate the deficit in the account, the board may make a loan from any of the homestead accounts to the nonhomestead account, subject to approval by the office and provided that such loan does not impair the financial status of any of the homestead accounts.

5. A policyholder in a nonhomestead account who has not paid a deficit assessment levied by the corporation shall be ineligible for coverage by a surplus lines insurer or authorized insurer.

(c) The plan of operation of the corporation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which forms must be

approved by the office prior to use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which coverage is more limited than the coverage under a standard policy.

c. Commercial lines residential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

<u>f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. that contain more restrictive coverage.</u>

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as

defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance agreement, may not be altered by the inability of the other party to the agreement to pay its specified percentage of hurricane losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that neither the authorized insurer nor the corporation may be held responsible beyond its specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the quota share primary insurance agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The

corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of quota share agreements, pricing of quota share agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer shall be voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation shall have the power to borrow funds, by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other

indebtedness. The corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (g)2., in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation is authorized to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.a. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of 8 individuals who are residents of this state, from different geographical areas of this state. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board, effective August 1, 2005. At least one of the two

members appointed by each appointing officer must have demonstrated expertise in insurance. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board, as recommended by the Chief Financial Officer, and serve at the pleasure of the board. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board and the Chief Financial Officer.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage. The members of the advisory committee shall consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of

Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members must serve for 3-year terms and may serve for consecutive terms. The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, the risk is not eligible for any policy issued by the corporation. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the

insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. To preserve existing incentives for carriers to write dwellings in the voluntary market and not in the corporation, the corporation shall continue to offer authorized insurers, including insurers writing dwellings valued at $1 million or more, the same voluntary writing credits that were available on January 1, 2006, to carriers writing wind coverage for dwellings in the areas eligible for coverage in the high-risk account.

d. With respect to personal lines residential risks, if the risk is a dwelling with an insured value of $1 million or more, or if the risk is one that is excluded from the coverage to be provided by the condominium association under s. 718.111(11)(b) and that is insured by the condominium unit owner for a combined dwelling and contents replacement cost of $1 million or more, the risk is not eligible for any policy issued by the corporation. Rates and forms for personal lines residential risks not eligible for coverage by the corporation specified by this sub-subparagraph are not subject to ss. 627.062 and 627.0629. Such rates and forms are subject to all other applicable provisions of this code and rules adopted under this code. During the course of an insurer's market conduct examination, the office may review the rate for any risk to which the provisions of this sub-subparagraph are applicable to determine if such rate is inadequate or unfairly discriminatory. Rates on personal lines residential risks not eligible for coverage by the corporation may be found inadequate by the office if they are clearly insufficient, together with the investment income attributable to such risks, to sustain projected losses and expenses in the class of business to which such rates apply. Rates on personal lines residential risks not eligible for coverage by the corporation may also be found inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks. Rates on personal lines residential risks not eligible for coverage by the corporation may be found to be unfairly discriminatory as to a risk or group of risks by the office if the application of premium discounts, credits, or surcharges among such risks does

not bear a reasonable relationship to the expected loss and expense experience among the various risks. A rating plan, including discounts, credits, or surcharges on personal lines residential risks not eligible for coverage by the corporation may also be found to be unfairly discriminatory if the plan fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program adjusted pursuant to s. 627.0625. The office may order an insurer to discontinue using a rate for new policies or upon renewal of a policy if the office finds the rate to be inadequate or unfairly discriminatory. Insurers must maintain records and documentation relating to rates and forms subject to this sub-subparagraph for a period of at least 5 years after the effective date of the policy.

e. For policies subject to nonrenewal as a result of the risk being no longer eligible for coverage pursuant to sub-subparagraph d., the corporation shall, directly or through the market assistance plan, make information from confidential underwriting and claims files of policyholders available only to licensed general lines agents who register with the corporation to receive such information according to the following procedures:

(I) By August 1, 2006, the corporation shall provide policyholders who are not eligible for renewal pursuant to sub-subparagraph d. the opportunity to request in writing, within 30 days after the notification is sent, that information from their confidential underwriting and claims files not be released to licensed general lines agents registered pursuant to sub-sub-subparagraph e.(II);

(II) By August 1, 2006, the corporation shall make available to licensed general lines agents the registration

procedures to be used to obtain confidential information from underwriting and claims files for policies not eligible for renewal pursuant to sub-subparagraph d. As a condition of registration, the corporation shall require the licensed general lines agent to attest that the agent has the experience and relationships with authorized or surplus lines carriers to attempt to offer replacement coverage for policies not eligible for renewal pursuant to sub-subparagraph d.

(III) By September 1, 2006, the corporation shall make available through a secured website to licensed general lines agents registered pursuant to sub-sub-subparagraph e.(II) application, rating, loss history, mitigation, and policy type information relating to all policies not eligible for renewal pursuant to sub-subparagraph d. and for which the policyholder has not requested the corporation withhold such information pursuant to sub-sub-subparagraph e.(I). The licensed general lines agent registered pursuant to sub-sub-subparagraph e.(II) may use such information to contact and assist the policyholder in securing replacement policies and the agent may disclose to the policyholder such information was obtained from the corporation.

f. With respect to nonhomestead property, eligibility must be determined in accordance with sub-sub-sub-subparagraph (b)2.a.(II)(A).

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray

deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation shall make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss in the homestead accounts as determined by the board of governors.

10. Must provide that in the event of regular deficit assessments under sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b., in the personal lines homestead account, the commercial lines residential homestead account, or the high-risk homestead account, the corporation shall levy upon corporation homestead account policyholders in its next rate filing, or by a separate rate filing solely for this purpose, a Citizens policyholder ~~market equalization~~ surcharge arising from a regular assessment in such account in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide

direct written premium for subject lines of business for the ~~prior calendar~~ year preceding the year in which the deficit to which the regular assessment related is incurred. Citizens policyholder ~~Market equalization~~ surcharges under this subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay the Citizens policyholder ~~a market equalization~~ surcharge shall be treated as failure to pay premium. Notwithstanding any other provision of this section, for purposes of the Citizens policyholder surcharges to be levied pursuant to this subparagraph, the total amount of the regular assessment to which such Citizens policyholder surcharge relates shall be determined as set forth in sub-subparagraphs (b)3.a., b., and c.

11. The policies issued by the corporation must provide that, if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation.

12. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the corporation or an insurer writing coverage pursuant to part VIII of chapter 626. The notice shall also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

13. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes to the eligibility requirements and operational procedures are

justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the corporation. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

14. Must provide that, with respect to the high-risk homestead account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. ~~In no event shall a limited apportionment company be required to participate in the portion of any assessment, within the high-risk account, pursuant to sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the aggregate which exceeds $50 million after payment of available high-risk account funds in any calendar year. However,~~ A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan shall provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (g)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

15. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

16. Must provide that the hurricane deductible for any property in the nonhomestead account with an insured value of $250,000 or more must be at least 5 percent of the insured value.

17. Must provide that the application for coverage under the nonhomestead account and the declaration page of each nonhomestead account policy include a statement in boldface 12-point type specifying that public subsidies do not support the corporation's coverage of nonhomestead property; that if the nonhomestead account of the corporation sustains a deficit or is unable to pay claims, the nonhomestead policyholder shall be subject to an immediate assessment in an amount up to 100 percent of the premium and a further assessment upon renewal of the policy; and that the applicant or policyholder may wish to seek alternative coverage from an authorized insurer or surplus lines insurer that will not be subject to such potential assessments.

18. Must provide that the application for coverage under any of the homestead accounts and the declaration page of each homestead account policy include a statement in boldface 12-point type specifying that a false declaration of homestead status for purposes of obtaining coverage in any of the homestead accounts may constitute the offense of insurance

fraud, as prohibited and punishable as a felony under s. 817.234.

19. Must limit coverage on mobile or manufactured homes built prior to 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

(d)1.a. It is the intent of the Legislature that the rates for coverage provided by the corporation be actuarially adequate ~~sound~~ and not competitive with approved rates charged in the admitted voluntary market, so that the corporation functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. Rates shall include a residual market risk load that reflects the concentrated exposure of the corporation and the impact of adverse selection as well as an appropriate catastrophe loading factor that reflects the actual catastrophic exposure of the corporation.

b. It is the intent of the Legislature to reaffirm the requirement of rate adequacy in the residual market. Recognizing that rates may comply with the intent expressed in sub-subparagraph a. and yet be inadequate and recognizing the public need to limit subsidies within the residual market, it is the further intent of the Legislature to establish statutory standards for rate adequacy. Such standards are intended to supplement the standard specified in s. 627.062(2)(e)3., providing that rates are inadequate if they are clearly insufficient to sustain projected losses and expenses in the class of business to which they apply.

2. For each county, the average rates of the corporation for each line of business for personal lines residential policies excluding rates for wind-only policies shall be no lower than the average rates charged by the insurer that had the

highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state for that line of business in the preceding year, except that with respect to mobile home coverages, the average rates of the corporation shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 5 insurers with the greatest total written premium for mobile home owner's policies in the state in the preceding year.

3. Rates for personal lines residential wind-only policies must be actuarially adequate ~~sound~~ and not competitive with approved rates charged by authorized insurers. If the filing under this paragraph is made at least 90 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, then such filing shall be considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings shall not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. Corporation rate manuals shall include a rate surcharge for seasonal occupancy. To ensure that personal lines residential wind-only rates are not competitive with approved rates charged by authorized insurers, the

corporation, in conjunction with the office, shall develop a wind-only ratemaking methodology, which methodology shall be contained in each rate filing made by the corporation with the office. If the office determines that the wind-only rates or rating factors filed by the corporation fail to comply with the wind-only ratemaking methodology provided for in this subsection, it shall so notify the corporation and require the corporation to amend its rates or rating factors to come into compliance within 90 days of notice from the office.

4. For the purposes of establishing a pilot program to evaluate issues relating to the availability and affordability of insurance in an area where historically there has been little market competition, the provisions of subparagraph 2. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies. The provisions of subparagraph 3. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies in the area of that county which is eligible for wind-only coverage. In this county, the rates for personal lines residential coverage shall be actuarially adequate ~~sound~~ and not excessive, inadequate, or unfairly discriminatory and are subject to the other provisions of the paragraph and s. 627.062. The commission shall adopt rules establishing the criteria for determining whether a reasonable degree of competition exists for personal lines residential policies in Monroe County. By March 1, 2006, the office shall submit a report to the Legislature providing an evaluation of the implementation of the pilot program affecting Monroe County. Any proposed rate increase filed by the

corporation after May 1, 2006 but before October 1, 2006 for Monroe County based upon actuarial adequacy shall be implemented in equal amounts over a period of three years.

5. Rates for commercial lines coverage shall not be subject to the requirements of subparagraph 2., but shall be subject to all other requirements of this paragraph and s. 627.062.

6.a. Nothing in this paragraph shall require or allow the corporation to adopt a rate that is inadequate under s. 627.062 or under sub-subparagraph b. or sub-subparagraph c.

b. With respect to rates for coverage in any homestead account, a rate is deemed inadequate if the rate is not sufficient to generate, by means of cash flow, procurement of coverage under the Florida Hurricane Catastrophe Fund, reinsurance costs whether or not reinsurance is procured, and investment income, moneys sufficient to pay all claims and expenses reasonably expected to result from a 100-year probable maximum loss event without resort to any regular or emergency assessments, long-term debt, state revenues, or other funding sources that reflect any subsidy from persons or entities other than corporation homestead accounts policyholders.

c. With respect to rates for coverage in the nonhomestead account, a rate is deemed inadequate if the rate is not sufficient to generate, by means of cash flow, procurement of coverage under the Florida Hurricane Catastrophe Fund reinsurance costs whether or not reinsurance is procured and investment income, moneys sufficient to pay all claims and expenses reasonably expected to result from a 250-year probable maximum loss event without resort to any assessments, debt, state revenues, or other funding sources that reflect any

subsidy from persons or entities other than corporation nonhomestead account policyholders.

7. The corporation shall certify to the office at least twice annually that its personal lines rates comply with the requirements of subparagraphs 1., ~~and~~ 2., and 6. If any adjustment in the rates or rating factors of the corporation is necessary to ensure such compliance, the corporation shall make and implement such adjustments and file its revised rates and rating factors with the office. If the office thereafter determines that the revised rates and rating factors fail to comply with the provisions of subparagraphs 1. and 2., it shall notify the corporation and require the corporation to amend its rates or rating factors in conjunction with its next rate filing. The office must notify the corporation by electronic means of any rate filing it approves for any insurer among the insurers referred to in subparagraph 2.

8. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided for in s. 624.509 to augment the financial resources of the corporation.

~~9.a. To assist the corporation in developing additional ratemaking methods to assure compliance with subparagraphs 1. and 4., the corporation shall appoint a rate methodology panel consisting of one person recommended by the Florida Association of Insurance Agents, one person recommended by the Professional Insurance Agents of Florida, one person recommended by the Florida Association of Insurance and Financial Advisors, one person recommended by the insurer with the highest voluntary market share of residential property insurance business in the state, one person recommended by the insurer with the second-highest voluntary market share of residential property insurance~~

~~business in the state, one person recommended by an insurer writing commercial residential property insurance in this state, one person recommended by the Office of Insurance Regulation, and one board member designated by the board chairman, who shall serve as chairman of the panel.~~

~~b. By January 1, 2004, the rate methodology panel shall provide a report to the corporation of its findings and recommendations for the use of additional ratemaking methods and procedures, including the use of a rate equalization surcharge in an amount sufficient to assure that the total cost of coverage for policyholders or applicants to the corporation is sufficient to comply with subparagraph 1.~~

~~c. Within 30 days after such report, the corporation shall present to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of each house of the Legislature, and the chairs of the standing committees of each house of the Legislature having jurisdiction of insurance issues, a plan for implementing the additional ratemaking methods and an outline of any legislation needed to facilitate use of the new methods.~~

~~d. The plan must include a provision that producer commissions paid by the corporation shall not be calculated in such a manner as to include any rate equalization surcharge. However, without regard to the plan to be developed or its implementation, producer commissions paid by the corporation for each account, other than the quota share primary program, shall remain fixed as to percentage, effective rate, calculation, and payment method until January 1, 2004.~~

9.~~10. By January 1, 2004,~~ The corporation shall provide ~~develop~~ a notice to policyholders or applicants that the rates of Citizens Property Insurance Corporation are intended to be

higher than the rates of any admitted carrier and providing other information the corporation deems necessary to assist consumers in finding other voluntary admitted insurers willing to insure their property.

(e) If coverage in an account is deactivated pursuant to paragraph (f), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from admitted carriers at their filed rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability of residential property insurance.

(f)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall

report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated in an account on the basis that the conditions giving rise to its activation no longer exist.

(g)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each assessable insurer, including, if prudent, filing suit to collect such assessment. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds

remain unsold 60 days after issuance, the office shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the office determines that the purchase would endanger or impair the solvency of the insurer.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which

such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

(h) Nothing in this subsection shall be construed to preclude the issuance of residential property insurance coverage pursuant to part VIII of chapter 626.

(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any assessable insurer or its agents or employees, the corporation or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation committee members, or the office or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

1. Any of the foregoing persons or entities for any willful tort;

2. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage;

3. The corporation with respect to issuance or payment of debt; or

4. Any assessable insurer with respect to any action to enforce an assessable insurer's obligations to the corporation under this subsection.

(j) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this subsection, paying claims for Florida citizens insured by the corporation, securing and

repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government. Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered "state bonds" within the meaning of s. 215.58(8). The corporation is not subject to the procurement provisions of chapter 287, and policies and decisions of the corporation relating to incurring debt, levying of assessments and the sale, issuance, continuation, terms and claims under corporation policies, and all services relating thereto, are not subject to the provisions of chapter 120. The corporation is not required to obtain or to hold a certificate of authority issued by the office, nor is it required to participate as a member insurer of the Florida Insurance Guaranty Association. However, the corporation is required to pay, in the same manner as an authorized insurer, assessments pledged by the Florida Insurance Guaranty Association to secure bonds issued or other indebtedness incurred to pay covered claims arising from insurer insolvencies caused by, or proximately related to, hurricane losses. It is the intent of the Legislature that the tax exemptions provided in this paragraph will augment the financial resources of the corporation to better enable the corporation to fulfill its public purposes. Any debt obligations ~~bonds~~ issued by the corporation, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof; however, this exemption does not apply to any tax

imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the corporation.

(k) Upon a determination by the office that the conditions giving rise to the establishment and activation of the corporation no longer exist, the corporation is dissolved. Upon dissolution, the assets of the corporation shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and shall be deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(l)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association shall become policies of the corporation. All obligations, rights, assets and liabilities of the Residential Property and Casualty Joint Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and shall become policies of the corporation. All obligations, rights, assets, and liabilities of the Florida

Windstorm Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsement or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions as may be proper to further evidence the transfers and shall provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the high-risk account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

~~4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.~~

4.~~5.~~ The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation shall in no way affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the Florida Hurricane Catastrophe Fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the high-risk account of the corporation. Notwithstanding any other provision of law, the coverage provided by the Florida Hurricane Catastrophe Fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the high-risk account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all Florida Hurricane Catastrophe Fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The

coverage provided by the Florida Hurricane Catastrophe Fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation.

(m) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. No such proceeding shall relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, Citizens policyholder ~~market equalization~~ or other surcharges under subparagraph (c)10., or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, market equalization or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any

agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

5. As long as the corporation has any bonds outstanding, the corporation shall not have the authority to file a voluntary

petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and neither any public officer nor any organization, entity, or other person shall authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

(n)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law will be redacted.

When an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under

oath, to maintain the confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff of and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

2. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(b)-(d), the court reporter's

notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(o) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual markets and should reduce the potential assessments to be levied on property insurers and policyholders statewide. In furtherance of this intent:

1. The board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association shall be the calculation dated February 2001 and based on November 30, 2000, exposures. In order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate the benchmark probable maximum loss. The reduction or increase in probable maximum loss shall be calculated without taking into account the probable maximum loss attributable to the nonhomestead account.

2. Beginning February 1, 2013 ~~2007~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and

the quota share program combined does not reflect a reduction of at least 25 percent from the benchmark, the board shall reduce the boundaries of the high-risk area eligible for wind-only coverages under this subsection in a manner calculated to reduce such probable maximum loss to an amount at least 25 percent below the benchmark.

3. Beginning February 1, 2018 ~~2012~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages under this subsection shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.

(p) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the applicable account of the corporation. So

long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

(q) The corporation shall not require the securing of flood insurance as a condition of coverage if the insured or applicant executes a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured in addition to coverage by the corporation, the risk will not be covered for flood damage. A corporation policyholder electing not to secure flood insurance and executing a form as provided herein making a claim for water damage against the corporation shall have the burden of proving the damage was not caused by flooding. Notwithstanding other provisions of this subsection, the corporation may deny coverage to an applicant or insured who refuses to execute the form described herein.

(r) A salaried employee of the corporation who performs policy administration services subsequent to the effectuation of a corporation policy is not required to be licensed as an agent under the provisions of s. 626.112.

(s) The transition to homestead and nonhomestead accounts shall begin on October 1, 2006. A policy issued on or after that date shall be issued in the applicable homestead account or the nonhomestead account, based upon whether the property constitutes homestead property as provided in subparagraph (b)2. A policy in effect on October 1, 2006, shall be placed in the applicable homestead account or the nonhomestead account, based upon whether the property constitutes homestead property as provided in subparagraph (b)2., upon the first renewal of such policy after October 1, 2006.

(t) Any employee of the corporation whose position is managerial, policymaking, or professional in nature and all members of the corporation's board of governors shall comply

with the Code of Ethics for public officers and employers found in ss. 112.311-112.326.

(u) An employee of the corporation shall notify the Division of Insurance Fraud within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by any employee of the corporation.

(v) By February 1, 2007, the corporation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the corporation shall consult with the Office of Insurance Regulation, the Department of Financial Services, and any other party the corporation determines is appropriate. The report shall include findings and recommendations on the feasibility of requiring authorized insurers that issue and service personal and commercial residential policies and commercial nonresidential policies that provide coverage for basic property perils except for the peril of wind to issue and service for a fee personal and commercial residential policies and commercial nonresidential policies providing coverage for the peril of wind issued by the corporation. The report shall include:

1. The expense savings to the corporation of issuing and servicing such policies as determined through a cost benefit analysis.

2. The expenses and liability to authorized insurers associated with issuing and servicing such policies.

3. The impact on service to policyholders of the corporation relating to issuing and servicing such policies.

4. The impact on the producing agent of the corporation of issuing and servicing such policies.

5. Recommendations as to the amount of the fee that should be paid to authorized insurers for issuing and servicing such policies.

6. The impact issuing and servicing such policies will have on the corporation's number of policies, total insured value, and probable maximum loss.

(w) There shall be no liability on the part of, and no cause of action of any nature shall arise against, producing agents of record or their employees for any action taken by them in the performance of their duties or responsibilities relating to the removal of policies from the corporation. Such immunity only applies to actions that may arise due to differences in coverage or procedures between any take-out insurer and the corporation or for insolvency of any take-out insurer.

(x) The Legislature finds that the total area eligible for the high-risk account of the corporation has a material impact on the availability of wind coverage from the voluntary admitted market, deficits of the corporation, assessments to be levied on property insurers and policyholders statewide, the ability and willingness of authorized insurers to write wind coverage in the high-risk areas, the probable maximum windstorm losses of the corporation, general commerce in coastal areas, and the overall financial condition of the state. Therefore, in furtherance of these findings and intent:

1. The High Risk Eligibility Panel is created.

2. The members of the panel shall be appointed as follows:

a. The board shall appoint two board members.

b. The Governor shall appoint one member.

c. The Chief Financial Officer shall appoint one member.

d. The Commissioner of Insurance Regulation shall appoint a representative of the office to serve as a member.

e. The President of the Senate shall appoint one member.

f. The Speaker of the House of Representatives shall appoint one member.

Members of the panel must be residents of this state with insurance expertise. Members shall elect a chair and shall serve 3-year terms each. The panel shall operate independently of any state agency and shall be administered by the corporation. The panel shall make an annual report to the President of the Senate and the Speaker of the House of Representatives on or before February 1 of each year recommending the areas that should be eligible for the high-risk account of the corporation. Members shall not receive compensation and are not entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061, except for any panel member who is a state employee.

3. The Legislature's intent provided in subparagraphs (a)1. and 2. shall provide guidance for the panel to use in the panel's recommendations to the Legislature required in subparagraph 1. The panel shall consider the following factors in fulfilling its responsibilities under this paragraph:

a. The number of commercial risks in a given area that are unable to find wind coverage from the voluntary admitted market.

b. Reports from members of the mortgage industry indicating difficulty in finding forced placed policies for commercial wind coverage.

c. The number of approved excess and surplus lines carriers certifying an unwillingness to provide commercial wind

coverage similar to that approved for use by the office for the voluntary admitted market.

d. Other relevant factors.

The office and the corporation shall provide the panel with any information the panel considers necessary to determine areas eligible for the high-risk account of the corporation. For the purpose of making accurate determinations for areas eligible for the high-risk account of the corporation, the panel may interview and request and receive information from residents of this state in areas impacted by this paragraph, including, but not limited to, insurance agents, insurance companies, actuaries, and other insurance professionals. Upon request of the panel, the office may conduct public hearings in areas that may be impacted by the panel's recommendations.

4. Notwithstanding other provisions of this paragraph, the panel shall conduct an analysis to determine the areas to be eligible for the high-risk account of the corporation for any county that contains an eligible area extending more than 2 miles from the coast, any coastal county that does not have areas designated as eligible for the high-risk account, and counties with barrier islands whether or not such islands or portions of such islands are currently eligible for the high risk account. The panel shall submit a report, including its analysis, to the office and to the corporation by November 30, 2006. The report shall specify changes to the areas eligible for the high-risk account for such affected counties based on its analysis.

Section 11. Paragraph (b) of subsection (3) of section 627.4035, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

627.4035 Cash payment of premiums; claims.--

(3) All payments of claims made in this state under any contract of insurance shall be paid:

(b) If authorized in writing by the recipient or the recipient's representative, by debit card or any other form of electronic transfer. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient's representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient's representative if the insurer verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. If the funds are misdirected, the insurer would remain liable for the payment of the claim.

(4) Nothing in this section shall be construed as prohibiting an insurer from limiting its liability under a policy or endorsement providing that loss will be adjusted on the basis of replacement costs to the lesser of:

(a) The limit of liability shown on the policy declarations page;

(b) The reasonable and necessary cost to repair the damaged, destroyed, or stolen covered property; or

(c) The reasonable and necessary cost to replace the damaged, destroyed, or stolen covered property.

Section 12. Effective January 1, 2007, subsection (9) is added to section 627.701, Florida Statutes, to read:

627.701 Liability of insureds; coinsurance; deductibles.--

(9) With respect to hurricane coverage provided in a policy of residential coverage, when the policyholder has taken appropriate hurricane mitigation measures regarding the residence covered under the policy, the insurer shall provide

the insured the option of selecting an appropriate reduction in the policy's hurricane deductible or selecting the appropriate discount credit or other rate differential as provided in s. 627.0629. The insurer must provide the policyholder with notice of the options available under this subsection on a form approved by the office.

Section 13. Subsections (2) and (3) of section 627.7011, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.--

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the law and ordinance coverage limited to 25 percent of the dwelling limit ~~specified in paragraph (1)(b)~~. The rejection or selection of alternative coverage shall be made on a form approved by the office. The form shall fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy when the policyholder has rejected the coverage specified in this section or has selected alternative coverage. The insurer must provide such policyholder with notice of the availability of such coverage in a form approved by the office at least once every 3 years. The failure

to provide such notice constitutes a violation of this code, but does not affect the coverage provided under the policy.

(3) In the event of a loss for which a dwelling ~~or personal property~~ is insured on the basis of replacement costs, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling ~~or property~~.

(6) Insurers shall issue separate checks for living expenses, contents, and casualty proceeds. Checks for living expenses and contents should be issued directly to the policyholder.

Section 14. Effective upon this act becoming a law, section 627.7019, Florida Statutes, is created to read:

627.7019 Standardization of requirements applicable to insurers after natural disasters.--

(1) The commission shall adopt by rule, pursuant to s. 120.54(1)-(3), standardized requirements that may be applied to insurers as a consequence of a hurricane or other natural disaster. The rules shall address the following areas:

(a) Claims reporting requirements.

(b) Grace periods for payment of premiums and performance of other duties by insureds.

(c) Temporary postponement of cancellations and nonrenewals.

(2) The rules adopted pursuant to this section shall require the office to issue an order within 72 hours after the occurrence of a hurricane or other natural disaster specifying, by line of insurance, which of the standardized requirements apply, the geographic areas in which they apply, the time at which applicability commences, and the time at which applicability terminates.

(3) The commission and the office may not adopt an emergency rule under s. 120.54(4) in conflict with any provision of the rules adopted under this section.

(4) The commission shall initiate rulemaking under this section no later than June 1, 2006.

Section 15. Subsection (5) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.--

(5) Any person having a claim against an insolvent insurer as defined in s. 631.54(6) ~~(5)~~ under the provisions of this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to any person in settlement of a claim arising under the provisions of this section, the association is not subrogated or entitled to any recovery against the claimant's insurer. The association, however, has the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

Section 16. Paragraph (f) is added to subsection (2) of section 631.181, Florida Statutes, to read:

631.181 Filing and proof of claim.--

(2)

(f) The signed statement required by this section shall not be required on claims for which adequate claims file documentation exists within the records of the insolvent insurer. Claims for payment of unearned premium shall not be required to use the signed statement required by this section if the receiver certifies to the guaranty fund that the records of the insolvent insurer are sufficient to determine the amount of unearned premium owed to each policyholder of the insurer and

such information is remitted to the guaranty fund by the receiver in electronic or other mutually agreed-upon format.

Section 17. Subsections (5), (6), (7), and (8) of section 631.54, Florida Statutes, are renumbered as subsections (6), (7), (8), and (9), respectively, and a new subsection (5) is added to that section, to read:

631.54 Definitions.--As used in this part:

(5) "Homeowner's insurance" means personal lines residential property insurance coverage that consists of the type of coverage provided under homeowner's, dwelling, and similar policies for repair or replacement of the insured structure and contents, which policies are written directly to the individual homeowner. Residential coverage for personal lines as set forth in this section includes policies that provide coverage for particular perils such as windstorm and hurricane coverage but excludes all coverage for mobile homes, renter's insurance, or tenant's coverage. The term "homeowner's insurance" excludes commercial residential policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, and also excludes coverage for the common elements of a homeowners' association.

Section 18. Subsection (1) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.--

(1) There is created a nonprofit corporation to be known as the "Florida Insurance Guaranty Association, Incorporated." All insurers defined as member insurers in s. 631.54(7) ~~(6)~~ shall be members of the association as a condition of their authority to transact insurance in this state, and, further, as a condition of such authority, an insurer shall agree to reimburse

the association for all claim payments the association makes on said insurer's behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 19. Paragraph (a) of subsection (1), paragraph (d) of subsection (2), and paragraph (a) of subsection (3) of section 631.57, Florida Statutes, are amended, and paragraph (e) is added to subsection (3) of that section, to read:

631.57 Powers and duties of the association.--

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only the amount of each covered claim that is in excess of $100 and is less than $300,000, except policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim that relates only to the damage to the structure and contents.

3.a.~~2.~~ Notwithstanding subparagraph 2., the obligation under subparagraph 1. for ~~shall include only that amount of each~~

~~covered claim which is in excess of $100 and is less than $300,000, except with respect to~~ policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, ~~the obligation~~ shall include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph ~~subparagraph~~ applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(2) The association may:

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. Additionally, the association may enter into such contracts with a municipality, a county, or a legal entity created pursuant to s.

163.01(7)(g) as are necessary in order for the municipality, county, or legal entity to issue bonds under s. 631.695. In connection with the issuance of any such bonds and the entering into of any such necessary contracts, the association may agree to such terms and conditions as the association deems necessary and proper.

(3)(a) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims, ~~and also~~ to pay the reasonable costs to administer the same, and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net

direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(e)1.a. In addition to assessments otherwise authorized in paragraph (a) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(c).

b. Any emergency assessments authorized under this paragraph shall be levied by the office upon insurers referred to in sub-subparagraph a., upon certification as to the need for such assessments by the board of directors, in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding, in such amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments provided for in this paragraph are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the

holders of such bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the office, or any other party. To the extent bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report required by s. 631.695(7) shall include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

e. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) shall include emergency assessments imposed under this paragraph.

2. In order to ensure that insurers paying emergency assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall submit a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.

3. An annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

4. Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

Section 20. Section 631.695, Florida Statutes, is created to read:

631.695 Revenue bond issuance through counties or municipalities.--

(1) The Legislature finds:

(a) The potential for widespread and massive damage to persons and property caused by hurricanes making landfall in this state can generate insurance claims of such a number as to render numerous insurers operating within this state insolvent and therefore unable to satisfy covered claims.

(b) The inability of insureds within this state to receive payment of covered claims or to timely receive such payment creates financial and other hardships for such insureds and places undue burdens on the state, the affected units of local government, and the community at large.

(c) In addition, the failure of insurers to pay covered claims or to timely pay such claims due to the insolvency of such insurers can undermine the public's confidence in insurers operating within this state, thereby adversely affecting the stability of the insurance industry in this state.

(d) The state has previously taken action to address these problems by adopting the Florida Insurance Guaranty Association Act, which, among other things, provides a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.

(e) In the wake of the unprecedented destruction caused by various hurricanes that have made landfall in this state, the resultant covered claims, and the number of insurers rendered insolvent thereby, make it evident that alternative programs must be developed to allow the Florida Insurance Guaranty

Association to more expeditiously and effectively provide for the payment of covered claims.

(f) It is therefore determined to be in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of the residents of this state and for the protection and preservation of the economic stability of insurers operating in this state and it is declared to be an essential public purpose to permit certain municipalities and counties to take such actions as will provide relief to claimants and policyholders having covered claims against insolvent insurers operating in this state by expediting the handling and payment of covered claims.

(g) To achieve the foregoing purposes, it is proper to authorize municipalities and counties of this state substantially affected by the landfall of a hurricane to issue bonds to assist the Florida Insurance Guaranty Association in expediting the handling and payment of covered claims of insolvent insurers.

(h) In order to avoid the needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, it is in the best interests of the residents of this state to authorize municipalities and counties severely affected by a hurricane to provide for the payment of covered claims beyond their territorial limits in the implementation of such programs.

(i) It is a paramount public purpose for municipalities and counties substantially affected by the landfall of a hurricane to be able to issue bonds for the purposes described in this section. Such issuance shall provide assistance to residents of those municipalities and counties as well as to other residents of this state.

(2) The governing body of any municipality or county, the residents of which have been substantially affected by a hurricane, may issue bonds to fund an assistance program in conjunction with, and with the consent of, the Florida Insurance Guaranty Association for the purpose of paying claimants' or policyholders' covered claims, as defined in s. 631.54, arising through the insolvency of an insurer, which insolvency is determined by the Florida Insurance Guaranty Association to have been a result of a hurricane, regardless of whether the claimants or policyholders are residents of such municipality or county or the property to which the claim relates is located within or outside the territorial jurisdiction of the municipality or county. The power of a municipality or county to issue bonds, as described in this section, is in addition to any powers granted by law and may not be abrogated or restricted by any provisions in such municipality's or county's charter. A municipality or county issuing bonds for this purpose shall enter into such contracts with the Florida Insurance Guaranty Association or any entity acting on behalf of the Florida Insurance Guaranty Association as are necessary to implement the assistance program. Any bonds issued by a municipality or county or a combination thereof under this subsection shall be payable from and secured by moneys received by or on behalf of the municipality or county from assessments levied under s. 631.57(3)(a) and assigned and pledged to or on behalf of the municipality or county for the benefit of the holders of the bonds in connection with the assistance program. The funds, credit, property, and taxing power of the state or any municipality or county shall not be pledged for the payment of such bonds.

(3) Bonds may be validated by the municipality or county pursuant to chapter 75. The proceeds of the bonds may be used to pay covered claims of insolvent insurers; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, costs of obtaining credit enhancement or liquidity support, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the association may determine. The term of the bonds may not exceed 30 years.

(4) The state covenants with holders of bonds of the assistance program that the state will not take any action that will have a material adverse effect on the holders and will not repeal or abrogate the power of the board of directors of the association to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of the bonds as long as any of the bonds remain outstanding, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of the bonds.

(5) The accomplishment of the authorized purposes of such municipality or county under this section is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. The municipality or county, in performing essential governmental functions in accomplishing its purposes, is not required to pay any taxes or assessments of any

kind whatsoever upon any property acquired or used by the county or municipality for such purposes or upon any revenues at any time received by the county or municipality. The bonds, notes, and other obligations of the municipality or county and the transfer of and income from such bonds, notes, and other obligations, including any profits made on the sale of such bonds, notes, and other obligations, are exempt from taxation of any kind by the state or by any political subdivision or other agency or instrumentality of the state. The exemption granted in this subsection is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(6) Two or more municipalities or counties, the residents of which have been substantially affected by a hurricane, may create a legal entity pursuant to s. 163.01(7)(g) to exercise the powers described in this section as well as those powers granted in s. 163.01(7)(g). References in this section to a municipality or county includes such legal entity.

(7) The association shall issue an annual report on the status of the use of bond proceeds as related to insolvencies caused by hurricanes. The report must contain the number and amount of claims paid. The association shall also include an analysis of the revenue generated from the assessment levied under s. 631.57(3)(a) to pay such bonds. The association shall submit a copy of the report to the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer within 90 days after the end of each calendar year in which bonds were outstanding.

Section 21. No provision of s. 631.57 or s. 631.695, Florida Statutes, shall be repealed until such time as the principal, redemption premium, if any, and interest on all bonds

issued under s. 631.695, Florida Statutes, payable and secured from assessments levied under s. 631.57(3)(a), Florida Statutes, have been paid in full or adequate provision for such payment has been made in accordance with the bond resolution or trust indenture pursuant to which the bonds were issued.

Section 22. Paragraph (a) of subsection (1) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.--

(1)(a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

3.a. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, any false, incomplete, or misleading information or written or oral statement as part of, or in

support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract, including any false declaration of homestead status for the purpose of obtaining coverage in a homestead account under s. 627.351(6); or

b. Who knowingly conceals information concerning any fact material to such application.

Section 23. Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.--

(1) TASK FORCE CREATED.--There is created the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.

(2) ADMINISTRATION.--The task force shall be administratively housed within the Office of Insurance Regulation but shall operate independently of any state officer or agency. The office shall provide such administrative support as the task force deems necessary to accomplish its mission and shall provide necessary funding for the task force within the office's existing resources. The Executive Office of the Governor, the Department of Financial Services, the Office of Insurance Regulation, the Department of Highway Safety and Motor Vehicles, and the Department of Community Affairs shall provide substantive staff support for the task force.

(3) MEMBERSHIP.--The members of the task force shall be appointed as follows:

(a) The Governor shall appoint two members who have expertise in financial matters, one of whom is a representative of the mobile or manufactured home industry and one of whom is a representative of insurance consumers.

(b) The Chief Financial Officer shall appoint two members who have expertise in financial matters, one of whom is a

representative of a property insurer writing mobile or manufactured homeowners insurance in this state and one of whom is a representative of insurance agents.

(c) The President of the Senate shall appoint one member.

(d) The Speaker of the House of Representatives shall appoint one member.

(e) The Commissioner of Insurance Regulation or his or her designee shall serve as an ex officio voting member of the task force.

(f) The Executive Director of Citizens Property Insurance or his or her designee shall serve as an ex officio voting member of the task force.

(g) The Chief Executive Officer of the Federal Alliance for Safe Homes, Incorporated or his or her designee shall serve as an ex officio voting member of the task force.

Members of the task force shall serve without compensation but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

(4) PURPOSE AND INTENT.--The Legislature recognizes the continued availability of hurricane insurance coverage for mobile and manufactured home owners in this state is essential to the state's economic survival. The Legislature further recognizes hurricane mitigation measures and building codes may reduce the likelihood or amount of damage to mobile or manufactured homes in the event of a hurricane. The Legislature further recognizes mobile and manufactured homes provide safe and affordable housing to many residents of this state. The purpose of the task force is to make recommendations to the legislative and executive branches of this state's government relating to the creation and maintenance of insurance capacity

in the private sector and public sector that is sufficient to ensure that all mobile and manufactured home owners in this state are able to obtain appropriate insurance coverage for hurricane losses and relating to the effectiveness of hurricane mitigation measures for mobile or manufactured homes as further described in this section.

(5) SPECIFIC TASKS.--The task force shall conduct such research and hearings as the task force deems necessary to achieve the purposes specified in subsection (4) and shall develop information on relevant issues, including, but not limited to, the following issues:

(a) Whether this state currently has sufficient hurricane insurance capacity for mobile and manufactured homes to ensure the continuation of a healthy, competitive marketplace, taking into consideration private-sector and public-sector resources.

(b) Identifying the future demands on the hurricane insurance capacity of this state, taking into account population growth, coastal growth, and anticipated future hurricane activity.

(c) Identifying how many mobile or manufactured homes are occupied in this state, how many mobile or manufactured homes are occupied by owners who also own the land to which the unit is attached, the age or average age of mobile or manufactured homes, the location of such homes, and the size of such homes.

(d) The extent to which the growth in insurance on mobile or manufactured homes in Citizens Property Insurance Corporation is attributable to insufficient insurance capacity.

(e) The extent to which the growth trends of Citizens Property Insurance Corporation create long-term problems for mobile and manufactured home owners in this state and for other persons and businesses that depend on a viable market.

(f) The extent to which insurance discounts, credits, or other rate differentials or reductions in the hurricane insurance deductible for a mobile or manufactured homeowner who takes mitigative measures would increase hurricane insurance capacity for mobile or manufactured homeowners.

(g) The extent hurricane mitigation enhancements to mobile or manufactured homes decreases the likelihood of damage from a hurricane or decreases the amount of damage from a hurricane.

(h) The extent to which the building codes reduce the likelihood of damage or amount of damage to mobile or manufactured homes.

(6) REPORT AND RECOMMENDATIONS.--By January 1, 2007, the task force shall provide a report containing findings relating to the tasks identified in subsection (5) and recommendations consistent with the purposes of this section and also consistent with such findings. The task force shall submit the report to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives. The task force may also submit such interim reports as the task force deems appropriate.

(7) EXPIRATION.--The task force shall expire on January 2, 2007.

Section 24. By January 1, 2007, the Office of Insurance Regulation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the office shall consult with the Department of Highway Safety and Motor Vehicles, the Department of Community Affairs, the Florida

Building Commission, the Florida Home Builders Association, representatives of the mobile and manufactured home industry, representatives of the property and casualty insurance industry, and any other party the office determines is appropriate. The report shall include findings and recommendations on the insurability of attached or free standing structures to residential homes, mobile, or manufactured homes, such as carports or pool enclosures; the increase or decrease in insurance costs associated with insuring such structures; the feasibility of insuring such structures; the impact on homeowners of not having insurance coverage for such structures; the ability of mitigation measures relating to such structures to reduce risk and loss; and such other related information as the office determines is appropriate for the Legislature to consider.

Section 25. The Office of Insurance Regulation, in consultation with the Department of Community Affairs, the Department of Financial Services, the Federal Alliance for Safe Homes, the Florida Insurance Council, the Florida Home Builders Association, the Florida Manufactured Housing Association, the Risk and Insurance Department of Florida State University, and the Institute for Business and Homes Safety, shall study and develop a program that will provide an objective rating system that will allow homeowner's to evaluate the relative ability of Florida properties to withstand the wind load from a sustained severe tropical storm or hurricane.

The rating system will be designed in a manner that is easy to understand for the property owner, based on proven readily verifiable mitigation techniques and devices, and able to be implemented based on a visual inspection program. The Department

of Financial Services shall implement a pilot program for use in the Florida Comprehensive Hurricane Damage Mitigation Program.

The Department shall provide a report to the Governor, the President of the Senate, and the Speaker of the House by March 31, 2007, detailing the nature and construction of the rating scale, its effectiveness based on implementation in a pilot program and an operational plan for statewide implementation of the rating scale.

Section 26. (1) For fiscal year 2006-2007, the sum of $100 million is appropriated from the General Revenue Fund to the Department of Financial Services for the Florida Hurricane Damage Prevention Endowment as a nonrecurring appropriation for the purposes specified in s. 215.558, Florida Statutes.

(2) The sum of $400 million is appropriated from the General Revenue Fund to the Department of Financial Services as a nonrecurring appropriation for the purposes specified in s. 215.5586, Florida Statutes.

(3) Funds provided in subsections (1) and (2) shall be transferred by the department to the Florida Hurricane Damage Prevention Trust Fund, as created in s. 215.5585, Florida Statutes.

(4) For fiscal year 2006-2007, the recurring sum of $5 million is appropriated to the Department of Financial Services from the Florida Hurricane Damage Prevention Trust Fund, Special Category - Financial Incentives for Hurricane Damage Prevention.

(5) For fiscal year 2006-2007, the nonrecurring sum of $400 million is appropriated to the Department of Financial Services from the Florida Hurricane Damage Prevention Trust Fund, Special Category - Florida Comprehensive Hurricane Damage Mitigation Program. The department may spend up to 1 percent of the funds appropriated to administer the program.

Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-2011 fiscal year. At the end of the 2010-2011 fiscal year, any obligated funds for qualified projects that are not yet disbursed shall remain with the department to be used for the purposes of this act. Any unobligated funds of this appropriation shall revert to the Florida Hurricane Damage Prevention Trust Fund at the end of the 2010-2011 fiscal year.

Section 27. (1) For fiscal year 2006-2007, the sum of $920 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services for transfer to the Citizens Property Insurance Corporation to avoid regular assessments on assessable insurers, as authorized under s. 627.351(6)(b)3.b., Florida Statutes, for the 2005 Plan Year deficit. The board of governors of the corporation shall use appropriated state moneys to fund that portion of the 2005 Plan Year deficit which would result in the levying of regular assessments in the commercial lines, personal lines, and high-risk accounts. The transfer made by the department to the corporation shall be limited to the amount of the total regular assessments that were authorized by law to cover the 2005 Plan Year deficit. Any unused and remaining funds in this appropriation shall revert to the General Revenue Fund.

(2) The corporation shall amortize over a 10-year period any emergency assessments resulting from the 2005 Plan Year deficit.

Section 28. For fiscal year 2006-2007, the sums of $250,000 in recurring funds and $425,000 in nonrecurring funds are appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance

Amendment No. (for drafter's use only)

Regulation for the purpose of carrying out reporting and administrative responsibilities of this act.

Section 29. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to property and casualty insurance; amending s. 215.555, F.S.; revising a definition; revising certain reimbursement contract criteria; providing retention levels for limited apportionment companies; revising certain reimbursement premium requirements; revising certain revenue bond emergency assessment requirements; creating s. 215.558, F.S.; creating the Florida Hurricane Damage Prevention Endowment; providing a purpose and legislative intent; providing definitions; providing requirements and authority for investment of endowment assets by the State Board of Administration; requiring a report to the Legislature; providing for payment of the board's investment services' costs and fees from the endowment; providing requirements of the Department of Financial Services in providing financial incentives for residential hurricane damage prevention activities; providing for an interest-free loan program; providing program criteria and requirements; creating s. 215.5586, F.S.; establishing the Florida Comprehensive Hurricane Damage Mitigation Program within the Department of Financial Services; providing qualifications for the program administrator; providing program components; creating an advisory council for certain purposes;

providing for appointment of members; requiring members to serve without compensation; providing for per diem and travel expenses; requiring the department to adopt rules; amending s. 215.559, F.S.; deleting a requirement for the Department of Community Affairs to establish a low-interest loan program for homeowners; amending s. 626.918, F.S.; authorizing certain letters of credit to fund an insurer's required policyholder protection trust fund; providing a definition; amending s. 627.062, F.S.; specifying certain rate filings as not subject to office determination as excessive or unfairly discriminatory; providing limitations; providing a definition; prohibiting certain rate filings under certain circumstances; preserving the office's authority to disapprove certain rate filings under certain circumstances; providing procedures for insurers submitting certain rate filings; specifying nonapplication to certain types of insurance; specifying approval of certain rate filings under certain circumstances; providing an exception; requiring the office to provide annual reports on the impact of certain rate regulations; specifying report requirements; amending s. 627.0628, F.S.; prohibiting certain office or consumer advocate questions of certain models reviewed by the commission; amending s. 627.06281, F.S.; prohibiting the office from using certain hurricane loss projection models under certain circumstances; amending s. 627.0645, F.S.; requiring the office to exempt insurers from a rate filing under specified circumstances; amending s. 627.351, F.S., relating to the Citizens Property Insurance Corporation; providing additional legislative intent; specifying application to homestead property; specifying the existing

three separate accounts of the corporation as providing coverage only for homestead property; providing a definition; providing for an additional separate account for nonhomestead property; requiring separate maintenance of revenues, assets, liabilities, losses, and expenses attributable to the nonhomestead account; providing authority and requirements for coverage rates for nonhomestead properties; providing for office review of such rates or rating plans for being inadequate or unfairly discriminatory; authorizing the office to order discontinuance of certain policies under certain circumstances; requiring insurers to maintain certain records; providing for reducing regular assessments by the Citizen policyholder surcharge under certain circumstances; providing for deficit assessments against nonhomestead account policyholders under certain circumstances; authorizing the board of governors of the corporation to make loans from the homestead accounts to the nonhomestead account under certain circumstances; specifying ineligibility of certain nonhomestead account policyholders for certain coverage under certain circumstances; revising the requirements of the plan of operation of the corporation; requiring additional procedures for determining eligibility of a risk for coverage; providing for determination of regular assessments to which the Citizen policyholder surcharge applies; specifying a minimum requirement for a hurricane deductible for certain property; specifying contents of required statements in applications for nonhomestead and homestead account coverage; requiring the corporation to purchase certain catastrophe reinsurance; limiting

coverage on mobile or manufactured homes to actual cash value; providing additional legislative intent relating to rate adequacy in the residual market; deleting a restriction on limited apportionment companies liability for assessments; providing procedures on the office's review of the corporations rate filings; requiring a delayed implementation on certain rates for Monroe County; deleting provisions relating to a rate methodology panel appointed by the corporation; providing requirements and limitations for a corporation adopted bonus payment program; providing a criterion for calculating reduction or increase in probable maximum loss; delaying application of certain high-risk area boundary reduction provisions; providing for application of provisions relating to homestead and nonhomestead accounts to certain policies; requiring certain corporation employees to comply with certain ethics code requirements; requiring corporation employees to notify the Division of Insurance Fraud of probable commissions of fraud by corporation employees; requiring the corporation to report on the feasibility of requiring authorized insurers to issue and service specified policies of the corporation; specifying report requirements; providing immunity to producing agents and employees for specified actions taken relating to removal of policies from the corporation; providing a limitation; providing legislative intent; creating a High Risk Eligibility Panel; providing for appointment of panel members and member's terms; providing for administration of the panel by the corporation; prohibiting compensation and per diem and travel expenses; providing an exception; requiring the panel to report annually to the Legislature

on the certain areas that should be included in the Citizens Property Insurance Corporation high risk account; specifying factors to be considered by the panel; providing duties of the office; authorizing the office to conduct public hearings; requiring the panel to conduct an analysis of property eligible for the high-risk account in specified areas; requiring the panel to submit a report to the office and corporation; providing requirements of the report; amending s. 627.4035, F.S.; providing for a waiver of a written authorization requirement to pay claims by debit card or other electronic transfer; providing construction relating to limiting the liability of an insurer for certain replacement costs; amending s. 627.701, F.S.; providing for the option of a reduction in hurricane deductibles when certain mitigation measures are taken; amending s. 627.7011, F.S.; limiting certain law and ordinance coverage; deleting application to personal property; requiring insurers to issue separate checks for certain expenses and requiring certain checks to be issued directly to a policyholder; creating s. 627.7019, F.S.; requiring the Financial Services Commission to adopt rules imposing standardized requirements applicable to insurers after certain natural events; providing criteria; providing requirements of the Office of Insurance Regulation; prohibiting certain conflicting emergency rules; amending s. 627.727, F.S.; correcting a cross-reference; amending s. 631.181, F.S.; providing an exception to certain requirements for a signed statement for certain claims; providing requirements; amending s. 631.54, F.S.; defining the term "homeowner's insurance"; amending s. 631.55, F.S.; correcting a cross-reference;

amending s. 631.57, F.S.; revising requirements and limitations for obligations of the Florida Insurance Guaranty Association for covered claims; authorizing the association to contract with counties, municipalities, and legal entities to issue revenue bonds for certain purposes; authorizing the Office of Insurance Regulation to levy assessments and emergency assessments on insurers under certain circumstances for certain bond repayment purposes; providing requirements for and limitations on such assessments; providing for payment, collection, and distribution of such assessments; requiring insurers to include an analysis of revenues from such assessments in a required report; providing rate filing requirements for insurers relating to such assessments; providing for continuing annual assessments under certain circumstances; specifying emergency assessments as not premium and not subject to certain taxes, fees, or commissions; specifying insurer liability for emergency assessments; providing an exception; creating s. 631.695, F.S.; providing legislative findings and purposes; providing for issuance of revenue bonds through counties and municipalities to fund assistance programs for paying covered claims for hurricane damage; providing procedures, requirements, and limitations for counties, municipalities, and the Florida Insurance Guaranty Association, Inc., relating to issuance and validation of such bonds; prohibiting pledging the funds, credit, property, and taxing power of the state, counties, and municipalities for payment of bonds; specifying authorized uses of bond proceeds; limiting the term of bonds; specifying a state covenant to protect bondholders from adverse actions relating to such bonds;

specifying exemptions for bonds, notes, and other obligations of counties and municipalities from certain taxes or assessments on property and revenues; authorizing counties and municipalities to create a legal entity to exercise certain powers; requiring the association to issue an annual report on the status of certain uses of bond proceeds; providing report requirements; requiring the association to provide a copy of the report to the Legislature and Chief Financial Officer; prohibiting repeal of certain provisions relating to certain bonds under certain circumstances; amending s. 817.234, F.S.; providing an additional circumstance that constitutes committing insurance fraud; creating the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes; providing for administration by the office; specifying additional agency administrative staff; providing for appointment of task force members; requiring members to serve without compensation; providing for per diem and travel expenses; providing purpose and intent; requiring the task force to address specified issues; requiring a report to the Governor, Chief Financial Officer, and Legislature; providing for expiration of the task force; requiring the Office of Insurance Regulation to submit reports to the Legislature relating to the insurability of certain attached or free standing structures and decreases in policyholder hurricane deductibles based on policyholder hurricane damage mitigation measures; providing report requirements; providing duties of the office; requiring the Office of Insurance Regulation to conduct a study of a rating system to assist homeowners in determining the wind resistance

factors; requiring the Department of Financial Services to implement a pilot program; providing report requirements; providing appropriations; specifying uses and purposes of appropriations; providing effective dates.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES 2

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Grimsley offered the following:

Amendment (with title amendment)

Between line(s) 559 and 560 insert:

Section 4. Section 215.559, Florida Statutes, is amended to read:

215.559 Hurricane Loss Mitigation Program.--

(1) There is created a Hurricane Loss Mitigation Program. The Legislature shall annually appropriate $17.5 ~~$10~~ million of the moneys authorized for appropriation under s. 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the Department of Community Affairs for the purposes set forth in this section.

(2)(a) Seven million dollars in funds provided in subsection (1) shall be used for programs to improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; cooperative programs with local governments and the Federal Government; and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.

(b) Three million dollars in funds provided in subsection (1) shall be used to retrofit existing facilities used as public hurricane shelters. The department must prioritize the use of these funds for projects included in the September 1, 2000, version of the Shelter Retrofit Report prepared in accordance with s. 252.385(3), and each annual report thereafter. The department must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize use of state funds.

(c). Seven million five hundred thousand dollars in funds provided in subsection (1) shall be used for the Manufactured Housing and Mobile Home Mitigation and Enhancement Program as set forth in subsection (4)(b).

(3) By the 2006-2007 fiscal year, the Department of Community Affairs shall develop a low-interest loan program for homeowners and mobile home owners to retrofit their homes with fixtures or apply construction techniques that have been demonstrated to reduce the amount of damage or loss due to a hurricane. Funding for the program shall be used to subsidize or guaranty private-sector loans for this purpose to qualified homeowners by financial institutions chartered by the state or Federal Government. The department may enter into contracts with financial institutions for this purpose. The department shall establish criteria for determining eligibility for the loans and selecting recipients, standards for retrofitting homes or mobile homes, limitations on loan subsidies and loan guaranties, and other terms and conditions of the program, which must be specified in the department's report to the Legislature on January 1, 2006, required by subsection (8). For the 2005-2006 fiscal year, the Department of Community Affairs may use up to

$1 million of the funds appropriated pursuant to paragraph (2)(a) to begin the low-interest loan program as a pilot project in one or more counties. The Department of Financial Services, the Office of Financial Regulation, the Florida Housing Finance Corporation, and the Office of Tourism, Trade, and Economic Development shall assist the Department of Community Affairs in establishing the program and pilot project. The department may use up to 2.5 percent of the funds appropriated in any given fiscal year for administering the loan program. The department may adopt rules to implement the program.

(4)(a) Forty percent of the total appropriation in paragraph (2)(a) shall be used to inspect and improve tie-downs for mobile homes. ~~Within 30 days after the effective date of that appropriation, the department shall contract with a public higher educational institution in this state which has previous experience in administering the programs set forth in this subsection to serve as the administrative entity and fiscal agent pursuant to s. 216.346 for the purpose of administering the programs set forth in this subsection in accordance with established policy and procedures. The administrative entity working with the advisory council set up under subsection (6) shall develop a list of mobile home parks and counties that may be eligible to participate in the tie-down program.~~

(b)1. There is created the Manufactured Housing and Mobile Home Mitigation and Enhancement Program. The program shall require the mitigation of damage to or enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement shall

include, but not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this act.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium shall be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation shall reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew.

4. On or before January 1 of each year, Tallahassee Community College shall provide a report of activities under

this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase of availability of insurance products to manufactured or mobile home owners.

Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for these programs shall be distributed directly to Tallahassee Community College for the uses set forth herein.

(5) Of moneys provided to the Department of Community Affairs in paragraph (2)(a), 10 percent shall be allocated to a Type I Center within the State University System dedicated to hurricane research. The Type I Center shall develop a preliminary work plan approved by the advisory council set forth in subsection (6) to eliminate the state and local barriers to upgrading existing mobile homes and communities, research and develop a program for the recycling of existing older mobile homes, and support programs of research and development relating to hurricane loss reduction devices and techniques for site-built residences. The State University System also shall consult with the Department of Community Affairs and assist the department with the report required under subsection (8).

(6) Except for the programs set forth in subsection (4), the Department of Community Affairs shall develop the programs

set forth in this section in consultation with an advisory council consisting of a representative designated by the Chief Financial Officer, a representative designated by the Florida Home Builders Association, a representative designated by the Florida Insurance Council, a representative designated by the Federation of Manufactured Home Owners, a representative designated by the Florida Association of Counties, and a representative designated by the Florida Manufactured Housing Association.

(7) Moneys provided to the Department of Community Affairs under this section are intended to supplement other funding sources of the Department of Community Affairs and may not supplant other funding sources of the Department of Community Affairs.

(8) On January 1st of each year, the Department of Community Affairs shall provide a full report and accounting of activities under this section and an evaluation of such activities to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate.

(9) This section is repealed June 30, 2011.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 31 and insert:

adopt rules; amending s. 215.559, F.S.; requiring an annual appropriation; requiring use of appropriated money for a specified purpose; deleting obsolete language; creating the Manufactured Housing and Mobile Home Mitigation and Enhancement Program for certain purposes; requiring Tallahassee Community College to develop the program in consultation with certain

entities; specifying certain requirements of the program as to certain concerns of the Department of Highway Safety and Motor Vehicles relating to manufactured homes and mobile homes; specifying the program as a grant program for improvement of mobile home and manufactured home parks; providing for distribution of the grants to Tallahassee Community College for certain purposes; requiring Citizens Property Insurance Corporation to grant certain insurance discounts, credits, rate differentials, or deductible reductions for property insurance premiums for manufactured home or mobile home owners; specifying criteria for such premiums; specifying funding for tie-down enhancement systems; requiring Tallahassee Community College to provide a program report each year to the Governor and Legislature; providing report requirements; creating s. 252.63, F.S.; providing purpose

SA to Amd #2

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Commerce Council

Representative(s) Farkas offered the following:

Substitute Amendment to Amendment by Rep. Grimsley (with title amendment)

Remove line(s) 611-623 and insert:

(3)(a)~~(4)~~ Forty percent of the total appropriation in paragraph (2)(a) shall be used to inspect and improve tie-downs for mobile homes. Within 30 days after the effective date of that appropriation, the department shall contract with a public higher educational institution in this state which has previous experience in administering the programs set forth in this subsection to serve as the administrative entity and fiscal agent pursuant to s. 216.346 for the purpose of administering the programs set forth in this subsection in accordance with established policy and procedures. The administrative entity working with the advisory council set up under subsection (6) shall develop a list of mobile home parks and counties that may be eligible to participate in the tie-down program.

(b)1. There is created the Manufactured Housing and Mobile Home Hurricane Mitigation Program. The program shall require

the mitigation of damage of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation shall include, but not be limited to, problems associated with weakened trusses, studs, and other structural components; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by the Department of Community Affairs upon consultation with the Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program may include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall include the offering of a matching grant to owners of manufactured and mobile homes manufactured after 1993 only. Homeowners accepted for the program shall be eligible to qualify for a $5,000 dollar-for-dollar matching grant in which the homeowner may receive up to $2,500 in state monies. The monies appropriated for this program shall be distributed directly to the Department of Community Affairs for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have

been installed or implemented. The discount on the premium shall be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation shall reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew.

4. On or before January 1 of each year, the Department of Community Affairs shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase of availability of insurance products to manufactured or mobile home owners.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 3598 and insert:

interest loan program for homeowners; creating the Manufactured Housing and Mobile Home Hurricane Mitigation Program for certain purposes; requiring the Department of Community Affairs to develop the program in consultation with certain entities; specifying certain requirements of the program as to certain concerns of the Department of Highway Safety and Motor Vehicles relating to manufactured homes and mobile homes; specifying the program as a matching grant program for improvement of mobile home and manufactured homes; providing for distribution of the grants to the Department of Community Affairs for certain purposes; requiring Citizens Property Insurance Corporation to

grant certain insurance discounts, credits, rate differentials, or deductible reductions for property insurance premiums for manufactured home or mobile home owners; specifying criteria for such premiums; requiring a program report each year to the Governor and Legislature; providing report requirements; amending s. 626.918,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES 3

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Commerce Council

Representative(s) Farkas offered the following:

Amendment (with title amendment)

Remove line(s) 3525-3539 and insert:

(5) For fiscal year 2006-2007, the nonrecurring sum of $392.5 million is appropriated to the Department of Financial Services from the Florida Hurricane Damage Prevention Trust Fund, Special Category - Florida Comprehensive Hurricane Damage Mitigation Program. The department may spend up to 1 percent of the funds appropriated to administer the program. Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-2011 fiscal year. At the end of the 2010-2011 fiscal year, any obligated funds for qualified projects that are not yet disbursed shall remain with the department to be used for the purposes of this act. Any unobligated funds of this appropriation shall revert to the Florida Hurricane Damage Prevention Trust Fund at the end of the 2010-2011 fiscal year.

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Amendment No. (for drafter's use only)

(6) For fiscal year 2006-2007, the nonrecurring sum of $7.5 million is appropriated to the Department of Community Affairs from the Florida Hurricane Damage Prevention Trust Fund, Special Category - Florida Comprehensive Hurricane Damage Mitigation Program. The department may spend up to 5 percent of the funds appropriated to administer the Manufactured Housing and Mobile Home Hurricane Mitigation Program. Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-2011 fiscal year. At the end of the 2010-2011 fiscal year, any obligated funds for qualified projects that are not yet disbursed shall remain with the department to be used for the purposes of this act. Any unobligated funds of this appropriation shall revert to the Florida Hurricane Damage Prevention Trust Fund at the end of the 2010-2011 fiscal year.

========== T I T L E A M E N D M E N T ==========

Remove line(s) and insert:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill:

Representative(s) Jennings offered the following:

Amendment to Strike-all Amendment by Rep. Ross

Remove line(s) 1095-1099 and insert:

includes property covered by tenant's insurance; commercial lines residential policies; hospitals licensed under chapter 395; care retirement and continuing care retirement

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HB 7225 jennings.doc

SA to Amd #4

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Ross offered the following:

Substitute Amendment for Amendment by Representative Jennings (with title amendment)

Remove line(s) 1095-1100 and insert:

includes property covered by tenant's insurance; commercial lines residential policies; any county, district, or municipal hospital, or hospital licensed by any not-for-profit corporation which is qualified under s. 501(c)(3) of the United States Internal Revenue Code; and continuing care retirement communities certified under chapter 651. The accounts providing

========== T I T L E A M E N D M E N T ==========

Remove line(s) and insert:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Jennings offered the following:

Amendment to Strike-all Amendment by Representative Ross (with directory and title amendments)

Between line(s) 2849 and 2850 insert:

(3)(a) A policy of residential property insurance shall include a deductible amount applicable to hurricane losses no lower than $500 and no higher than 2 percent of the policy dwelling limits with respect to personal lines residential risks, and no higher than 3 percent of the policy limits with respect to commercial lines residential risks; however, if a risk was covered on August 24, 1992, under a policy having a higher deductible than the deductibles allowed by this paragraph, a policy covering such risk may include a deductible no higher than the deductible in effect on August 24, 1992. Notwithstanding the other provisions of this paragraph, a personal lines residential policy covering a risk valued at $50,000 or less may include a deductible amount attributable to hurricane losses no lower than $250, and a personal lines residential policy covering a risk valued at $100,000 or more may include a deductible amount attributable to hurricane losses no higher than 10 percent of the policy limits unless subject to

a higher deductible on August 24, 1992; however, no maximum deductible is required with respect to a personal lines residential policy covering a risk valued at more than $500,000. An insurer may require a higher deductible, provided such deductible is the same as or similar to a deductible program lawfully in effect on June 14, 1995. In addition to the deductible amounts authorized by this paragraph, an insurer may also offer policies with a copayment provision under which, after exhaustion of the deductible, the policyholder is responsible for 10 percent of the next $10,000 of insured hurricane losses.

(b)1. Except as otherwise provided in this paragraph, prior to issuing a personal lines residential property insurance policy on or after January 1, 2006, or prior to the first renewal of a residential property insurance policy on or after January 1, 2006, the insurer must offer alternative deductible amounts applicable to hurricane losses equal to $500, 2 percent, 5 percent, and 10 percent of the policy dwelling limits, unless the specific percentage deductible is less than $500. The written notice of the offer shall specify the hurricane or wind deductible to be applied in the event that the applicant or policyholder fails to affirmatively choose a hurricane deductible. The insurer must provide such policyholder with notice of the availability of the deductible amounts specified in this paragraph in a form approved by the office in conjunction with each renewal of the policy. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy.

2. This paragraph does not apply with respect to a deductible program lawfully in effect on June 14, 1995, or to any similar deductible program, if the deductible program

requires a minimum deductible amount of no less than 2 percent of the policy limits.

3. With respect to a policy covering a risk with dwelling limits of at least $100,000, ~~but less than $250,000,~~ the insurer may, in lieu of offering a policy with a ~~$500 hurricane or~~ wind deductible as required by subparagraph 1., offer a policy that the insurer guarantees it will not nonrenew for reasons of reducing hurricane loss for one renewal period and that contains up to a 2 percent hurricane deductible, for two renewal periods and that contains up to a 5 percent hurricane deductible or for three renewal periods and that contains up to a 10 percent hurricane deductible ~~or wind deductible as required by subparagraph 1~~. Notwithstanding the requirements of this paragraph, the Office of Insurance Regulation may approve the nonrenewal of such policies if the guarantee renewal of the policies may jeopardize the financial ratings of an insurer.

4. With respect to a policy covering a risk with dwelling limits of $250,000 or more, the insurer need not offer the $500 hurricane deductible as required by subparagraph 1., but must, except as otherwise provided in this subsection, offer the other hurricane deductibles as required by subparagraph 1.

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line(s) 2847-2848 and insert:

Section 12. Effective July 1, 2006, subsection (3) is amended and effective January 1, 2007 subsection (9) is added to section 627.701, Florida Statutes, to read:

========== T I T L E A M E N D M E N T ==========

Remove line(s) 3699 and insert:

627.701, F.S.; requiring nonrenewals for specified hurricane deductibles; providing for the option of a reduction in

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill:

Representative(s) Jennings offered the following:

Amendment To Strike-all Amendment by Rep. Ross

Remove line(s) 2707-2739 and insert:

(v) For the purposes of establishing a pilot program in Palm Beach, Pinellas, and Manatee counties, policies covering the peril of wind on any risk insured in the high-risk account of the corporation in these counties may be issued and serviced by the authorized insurer issuing and servicing the multi peril policy that excludes wind for such risks. Any authorized insurer performing such functions must do so for every risk in the high-risk account areas for which it issues and services the multi peril policy that excludes wind for such risks. An authorized insurer performing such servicing functions is deemed to be an independent contractor acting only as a servicing carrier for the corporation and performing only policy issuance, servicing and claims adjusting functions on behalf of the corporation for a fee as provided in this paragraph and paragraph (z). Except at the option of the authorized insurer, nothing herein shall be construed to make any authorized insurer a risk bearer for all

(adopted)

or any portion of the exposure of wind in the high-risk account of the corporation.

(w). The corporation shall develop necessary procedures to enable authorized insurers in Palm Beach, Pinellas, and Manatee counties to issue and service its high-risk account policies by January 1, 2007. Such procedures shall permit any authorized insurer issuing and servicing policies of the high-risk account to do so by either endorsing its current approved multi peril policy excluding wind with the appropriate approved policy of the high risk account of the corporation or by issuing its own approved policy covering wind along with other perils. Neither the office nor the corporation shall prevent or impede an authorized insurer from using its own procedures, applications, rating methodologies, underwriting rules, rating territories, and electronic systems in issuing, servicing or adjusting claims for such policies, endorsements or coverage under this subsubparagraph as long as such procedures, rules, methodologies, territories or systems were not specifically prohibited by the office prior to this provision becoming law.

(x). Any rate filing, or applicable portion thereof, which includes the peril of wind in the high risk account areas of the corporation submitted to the office by an authorized insurer issuing and servicing policies of the corporation under this subsection, shall be deemed approved upon submission to the office if the filing or the applicable portion of such filing, requests approval of a rate that is no more than the approved rate for similar risks insured in the high risk account of the corporation.

(y). In the event of notification of a loss incurred by a policyholder in the high-risk account of the corporation, the

authorized insurer issuing the policy and receiving the notice shall either adjust the claim or arrange for the claim to be adjusted and submit the claim file to the corporation for payment of the claim by the corporation. The authorized insurer may choose to pay the claim and request reimbursement of the amount of the claim from the corporation. The corporation shall reimburse such amount due the authorized insurer within 30 days of receiving the claim file. Other arrangements for transmitting the claim file or submitting claims to the corporation, claim payment or reimbursement, including electronic means, may be entered into upon written agreement between the corporation and the authorized insurer. Any adjuster and any authorized insurer adjusting claims under this section shall be subject to all applicable provisions of Part VI of Chapter 626. Any adjuster found to be in violation of s. 626.877 or s. 626.878 is subject to revocation or suspension of license as set forth in Chapter 626, Part VI. Any claim of $100,000 or more must be specifically reviewed by the corporation before payment is made to the policyholder or reimbursement is provided to the carrier. All claims are subject to random audit by the office up to one year after the claim is closed and payment is made to the policyholder. In the event of an excess payment by the authorized insurer the corporation shall notify the authorized insurer of the amount of overpayment and give the authorized insurer 60 days to provide information contesting the amount of overpayment. If agreement cannot be reached on the amount to be refunded to the corporation, if any, the authorized insurer may request dispute resolution through arbitration.

(z). Any fee owed to an authorized insurer issuing and servicing policies under this paragraph or paragraph (v). shall

be determined by the corporation, and notwithstanding any other provision of the law to the contrary, without approval from the office and shall be calculated as a percentage of the high-risk account premium and retained by the authorized insurer from the wind portion of the premium received from the policyholder. The fee shall be fair and reasonable based on the costs incurred, which shall include recurring costs and amortization of initial programming costs. Such fee shall also be based on other work required by the corporation to be performed by the authorized insurer, cost savings to the corporation, and the usual and customary fees paid to servicing carriers performing similar functions. At the request of any authorized insurer performing servicing functions under this section, such fee for services shall be subject to binding arbitration as set forth in s. 627.062. The authorized insurer shall remit the balance of the premium less the fee to the corporation within 30 days of receipt of the premium from the policyholder. No authorized insurer shall be owed a fee for policies upon which it voluntarily provided coverage for wind including other perils on or after January 1, 2006 and prior to this section becoming law.

(aa). Any application for any risk to the high risk account of the corporation provided by the authorized insurer issuing and servicing the policy shall contain or be accompanied by the following statement in 12 point bold-face type:

"THE WIND COVERAGE PROVIDED IS UNDERWRITTEN BY CITIZENS PROPERTY INSURANCE CORPORATION AND IS SUBJECT TO TAKEOUT BY AN AUTHORIZED INSURER. WIND COVERAGE PROVIDED BY A TAKEOUT COMPANY MAY NOT BE IDENTICAL TO THE WIND COVERAGE INITIALLY PROVIDED IN THIS POLICY."

(bb). There shall be no liability on the part of, and no cause of action of any nature shall arise against, any authorized insurer issuing and servicing policies for the corporation as provided in this subsection while it is acting within the scope of its authority under this subsection or its agents or employees for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 3674-3677 and insert:

establishing a pilot program in specified counties for private insurers to issue, adjust, and service specified insurance policies of the corporation; requiring the corporation to adopt procedures for implementation of the pilot program; allowing automatic approval of certain rate filings; providing procedures to be followed in the event of a claim under the pilot program; allowing insurers participating in the pilot program to obtain a fee for participation set by the corporation; providing notification to policyholders; providing immunity to insurers participating in the pilot program; providing immunity to producing agents and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES 7

Amendment No. (for drafter's use only)

Bill No. **7225**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Galvano offered the following:

Amendment to Strike-all Amendment by Rep. Ross

Remove line(s) 2275-2292 and insert:

(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, producing agents of record of the corporation or their employees for insolvency of any take-out insurer.

GM

8

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7225**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Galvano offered the following:

Amendment to Strike-all Amendment by Rep. Ross (with title amendment)

Remove line(s) 1120-1145 and insert:

(C) ~~(III)~~ A high-risk account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The high-risk account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property~~.~~ and the entire portion of any barrier island, and areas where no barrier island exists and the coastal area was not eligible for the high-risk account as

of January 1, 2006, then any area up to and including 2000 feet from the coast. The office may remove territory from the area eligible for wind-only and quota share coverage if, after a public hearing, the office finds that authorized insurers in the voluntary market are willing and able to write sufficient amounts of personal and commercial residential coverage for all perils in the territory, including coverage for the peril of wind, such that risks covered by wind-only policies in the removed territory could be issued a policy by the corporation in either the personal lines or commercial lines account without a significant increase in the corporation's probable maximum loss in such account. Removal of territory from the area eligible for wind-only or quota share coverage does not alter the assignment of wind coverage written in such areas to the high-risk account. Eligibility for the high-risk account for barrier islands and any area up to and including 2000 feet from the coast provided for by this sub-sub-sub-subparagraph becomes effective upon becoming a law and expires on December 1,2006.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 3626 and insert:

definition; providing additional area to be included in the high-risk account; providing an expiration date; providing for an additional separate account

9

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Commerce Council

Representative(s) Patterson offered the following:

Amendment to Strike-all Amendment by Rep. Ross

Remove line(s) 1095-1100 and insert:

includes property covered by tenant's insurance; commercial lines residential policies; any county, district, or municipal hospital, or hospital licensed by any not-for-prfit corporation which is qualified under s. 501(c)(3) of the United States Internal Revenue Code; and homes for the aged all or part of which is licensed under chapter 400, part II of chapter 400, or part III of chapter 651 and continuing care facilities certified under chapter 651 that receive an ad valorem property tax exemption under chapter 196. The accounts providing

000000

Vote

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7227 CS PCB IN 06-02 Florida Hurricane Damage Prevention Endowment Trust Fund
SPONSOR(S): Insurance Committee
TIED BILLS: HB 7225 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	15 Y, 1 N	Callaway	Cooper
1) Fiscal Council	14 Y, 4 N, w/CS	Belcher	Kelly
2) Commerce Council		Callaway	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates the Florida Hurricane Damage Prevention Trust Fund (Trust Fund) within the Department of Financial Services. The Department of Financial Services will administer the Trust Fund, but the State Board of Administration will invest the trust fund moneys for endowment funds.

The Trust Fund will be used to carry out the purposes of s. 215.558, F.S., the Hurricane Prevention Endowment and s. 215.5586, F.S., the Comprehensive Hurricane Damage Mitigation Program. The authorized source of funds includes moneys transferred from other state funds, grants, donations, and applicable investment earnings. The use of funds is as authorized in ss. 215.558 and 215.5586, F.S., for the endowment and mitigation programs.

The bill requires an annual carry-forward of unused funds at the end of any fiscal year.

The bill provides for termination of the Trust Fund on or before July 1, 2010. Prior to termination, the Trust Fund must be reviewed pursuant to s. 215.3206(1) and (2), F.S.

The bill takes effect on July 1, 2006, but only if HB 7225 or similar legislation is adopted in the same legislative session or extension thereof and becomes law.

Since the bill creates a new trust fund, it must be enacted by a three-fifths vote of the membership of each house of the Legislature.

There is no fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Florida Hurricane Damage Prevention Trust Fund (Trust Fund) within the Department of Financial Services. The State Board of Administration will invest the endowment funds in the trust fund, but the trust fund administrator is the Department of Financial Services.

The Trust Fund will be used to carry out the purposes of s. 215.558, F.S., the Hurricane Prevention Endowment and s. 215.5586, F.S., the Comprehensive Hurricane Damage Mitigation Program. The authorized source of funds includes moneys transferred from the state funds, grants, donations, and applicable investment earnings. The use of funds is as authorized in ss. 215.558 and 215.5586, F.S., for the endowment and mitigation programs.

The bill requires a legislative review pursuant to s. 215.3206(1) and (2), F.S., prior to its scheduled constitutionally required termination of July 1, 2010. Any trust fund balance at the end of any fiscal year must be carried-forward.

C. SECTION DIRECTORY:

Section 1: Creates s. 215.5585, F.S., relating to the Florida Hurricane Damage Prevention Trust Fund.

Section 2: Makes the effective date of the bill July 1, 2006, but only if HB 7225 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

Pursuant to Article III, Section 19(f)(1), of the State Constitution, no trust fund of the State of Florida or any public body may be created by law without a three-fifths vote of the membership of each House of the Legislature. Additionally, the bill creating the trust fund must be separate from any related substantive bill. Also, Article III, Section 19(f)(2), of the State Constitution, requires the trust fund to terminate not more than four years after its creation. Section 215.3206, F.S., provides the statutory process for legislative review of trust funds prior to their termination so that the Legislature can decide whether to re-create, re-create with amendment, or terminate any trust fund.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Insurance Committee considered the bill, adopted one amendment, and reported the bill favorably. The amendment adopted provided conforming language to the tied bill, PCB IN 06-01. The staff analysis was updated to reflect the adoption of the amendment.

On April 17, 2006, the Fiscal Council considered the bill, adopted one strike-all amendment, and reported the bill favorably. The amendment provided conforming language to the tied bill, HB 7225, to include the use of the fund to carry-out the purposes of s. 215.5586, F.S., the Florida Comprehensive Hurricane Damage Mitigation Program as well as s. 215.558, F.S., the Florida Hurricane Damage Prevention Endowment.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Hurricane Damage Prevention Trust Fund; creating s. 215.5585, F.S.; creating the Florida Hurricane Damage Prevention Trust Fund within the Department of Financial Services; providing for administration and investment of the fund; providing for the use of moneys in the fund; requiring balances in the fund to remain in the fund for certain purposes; providing for future review and termination or re-creation of the fund; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.5585, Florida Statutes, is created to read:

215.5585 Florida Hurricane Damage Prevention Trust Fund.--

(1) The Florida Hurricane Damage Prevention Trust Fund, is created within the Department of Financial Services. The department shall serve as administrator of the fund, and the

State Board of Administration shall invest moneys in the fund as provided in s. 215.558.

(2) The fund shall be used by the department to carry out the purposes of ss. 215.558 and 215.5586. The moneys credited to the fund include transfers from other state funds, as well as any grants or donations received for the purpose for which the fund is created.

(3) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of that year and shall be available for carrying out the purposes of the trust fund.

(4) Pursuant to the provisions of s. 19(f)(2), Art. III of the State Constitution, the fund shall, unless terminated sooner, be terminated July 1, 2010. Prior to its scheduled termination, the fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. This act shall take effect July 1, 2006, only if HB 7225 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Hurricane Damage Prevention Trust Fund; creating s. 215.5585, F.S.; creating the Florida Hurricane Damage Prevention Trust Fund within the Department of Financial Services; providing for administration and investment of the fund; providing for the use of moneys in the fund; requiring balances in the fund to remain in the fund for certain purposes; providing for future review and termination or re-creation of the fund; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.5585, Florida Statutes, is created to read:

215.5585 Florida Hurricane Damage Prevention Trust Fund.--

(1) The Florida Hurricane Damage Prevention Trust Fund, is created within the Department of Financial Services. The department shall serve as administrator of the fund, and the

State Board of Administration shall invest moneys in the fund as provided in s. 215.558.

(2) The fund shall be used by the department to carry out the purposes of ss. 215.558 and 215.5586. The moneys credited to the fund include transfers from other state funds, as well as any grants or donations received for the purpose for which the fund is created.

(3) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of that year and shall be available for carrying out the purposes of the trust fund.

(4) Pursuant to the provisions of s. 19(f)(2), Art. III of the State Constitution, the fund shall, unless terminated sooner, be terminated July 1, 2010. Prior to its scheduled termination, the fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. This act shall take effect July 1, 2006, only if HB 7225 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HB 1473 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1473 Energy
SPONSOR(S): Hasner and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	17 Y, 0 N	Holt	Holt
2) Fiscal Council	20 Y, 0 N	Dixon/Diez-Arquelles	Kelly
3) Commerce Council		Holt	Randle
4)			
5)			

SUMMARY ANALYSIS

HB 1473 implements recommendations from the Florida Energy Plan. In general, the bill creates and revises several sections of law to devise a methodology for advancing the development of renewable technologies, promoting economic growth, diversifying fuel supply, as well as, streamlining the Power Plant Siting Act. More specifically, the bill:

- Creates the Renewable Energy Technologies Grants Program;
- Creates an Energy-Efficient Products Sales Tax Holiday from October 5, 2006, through October 11, 2006;
- Creates the Solar Energy System Incentive Program;
- Creates the Florida Energy Council;
- Creates a sales tax exemption for equipment, machinery, and other materials for renewable energy technologies;
- Creates a corporate investment tax credit for renewable energy technologies;
- Directs the Public Service Commission (PSC) to consider fuel diversity in reviewing 10-year site plans;
- Allows the PSC to require electric utilities to have their infrastructure exceed the National Electric Safety Code standards;
- Requires the PSC to direct a study of the electric transmission grid as well as examine the hardening of Florida's infrastructure to address issues arising from the 2004 and 2005 hurricane seasons; and
- Streamlines the Power Plant Siting Act by setting new timelines and streamlining procedures.

Further, the bill adjusts the criteria for the water projects grant program.

The Revenue Estimating Conference estimates that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will result in a negative fiscal impact of $11.0 million to state government and $1.2 million to local governments in FY 2006-07, and of $14.3 million to state government and $0.7 million to local governments in FY 2007-08. HB 5001, the General Appropriations Act, contains $15 million ($8.6m in General Revenue and $6.4 in Trust) for the Renewable Energy Technologies Grant Program and $5 million in General Revenue for the Solar Energy System Incentives Program. In addition, the bill provides an appropriation of $61,379 from the General Revenue Fund to the Department of Revenue (DOR) to administer the Energy-Efficient Products Sales Tax Holiday.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates the Florida Energy Council to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on energy issues. It also requires the PSC to direct a study on Florida's electric transmission grid. The report is to additionally address hardening of the state's infrastructure in response to the issues arising from the 2004 and 2005 hurricane seasons.

Ensure Lower Taxes-The bill creates the following: Renewable Energy Technologies Grant Program, Energy-Efficient Products Sales Tax Holiday, Solar Energy Systems Rebate Program, sales tax exemption for equipment, machinery and other renewable energy technologies, and renewable energy technologies investment tax credit.

Promote Personal Responsibility/Empower Families-The bill contains rebates and tax incentives to promote the sale of energy-efficient products and the use of renewable energy technologies.

Maintain Public Security-The bill provides incentives for the investment in renewable energy and alternative fuels, which may reduce the state's dependence on imported fossil fuels. The bill requires the PSC to consider fuel diversity when analyzing the utilities' 10-year site plans, thereby also potentially easing the state's dependence on any particular fuel for the generation of electricity. The bill also allows the PSC to require electric utilities to construct their infrastructure to standards that exceed the National Electric Safety Code.

B. EFFECT OF PROPOSED CHANGES:

General Background

On November 10, 2005, Governor Jeb Bush issued Executive Order #05-241 directing the Department of Environmental Protection (DEP) to develop a comprehensive energy plan. On December 14, 2005, the Secretary of DEP hosted the Florida Energy Forum where various parties were able to provide input in developing the plan. As required by the Executive Order, DEP issued the Florida Energy Plan on January 17, 2005.

The energy plan contained recommendations that spanned several areas. Those areas covered issues of diversification, conservation, and economic incentives. HB 1473 comprehensively implements initiatives from each of those areas.

According to research conducted by DEP in developing the Florida Energy Plan, the following background information was provided:

Florida's economy and quality of life depends on a secure, adequate and reliable supply of energy. As the fourth most populous state, Florida ranks third nationally in total energy consumption. With more than 17 million citizens and nearly 1,000 new residents arriving daily, Florida is one of the fastest growing states in the nation. Because of its expanding economy, current forecasts indicate that Florida's electricity consumption will increase by close to 30 percent over the next ten years.

Since the last review of Florida's energy policy in 2000, several unpredictable events have heightened concern over energy reliability, security, and supply. The 2003 blackout in the northeast, along with

tremendous back-to-back hurricane seasons in 2004 and 2005, demonstrated the impact power outages and fuel interruptions have on the nation's economic welfare.

Producing less than one percent of the energy it consumes and limited by its geography, Florida is more susceptible to interruptions in energy supply than any other state. Unlike other states that rely on petroleum pipelines for fuel delivery, more than 98 percent of Florida's transportation fuel arrives by sea. The state's reliance on imported petroleum products, in addition to its anticipated growth in consumption, underscores its vulnerability to fluctuations in the market and interruptions in fuel production, supply and delivery.

Energy Production and a Growing Economy

Florida depends almost exclusively on other states and nations for supplies of oil and gasoline, generating less than one percent of the nation's crude oil production annually. To generate electricity, Florida primarily relies on natural gas, coal and oil imports.

Together, fossil fuels represent 86 percent of Florida's total generating capacity. Less than 10 percent of its generating capacity is derived from cleaner nuclear and renewable fuels. In fact, no new nuclear plants have entered service in Florida since 1983.

Current forecasts indicate that new generation capacity will be 80 percent natural gas-fired and 19 percent coal-fired. Meeting these projections could prove expensive at today's prices and lead to an over-reliance on one fuel type, affecting the reliability of electric utility generation supply in Florida. While expansions for natural gas capacity are needed and already underway, improving generation fuel diversity would enhance reliability over the long-term. Too great a reliance on a single fuel source leaves Floridians subject to the risks of price volatility and supply interruption.

A New Class of Energy

Although the nation's reliance on traditional fossil fuels is currently high, Florida is investing in alternative fuels and developing "next generation" energy technologies. In 2003, Governor Jeb Bush launched "H2 Florida" to accelerate the commercialization of hydrogen technologies and spur economic investment in Florida's economy. With a four to one return on investment, Florida and its federal partners have invested $9 million to date in hydrogen infrastructure. Construction of a "hydrogen highway" is underway, 28 hydrogen demonstration projects are in progress and more than 100 hydrogen research and development projects are taking place at Florida's universities.

Utilization of biofuels is in its infancy with the cost of renewable fuels relatively high compared with traditional hydrocarbon fuels. Currently, Florida has just one biodiesel facility and, absent a manufacturing plant, imports ethanol from refineries outside of the state. Increasing production, supply and infrastructure of biofuels through financial incentives would provide both economic and environmental returns for the state. Likewise, a stronger investment both residentially and commercially in solar technology would not only reduce utility costs but generate pollution-free power for Floridians. To date, solar technology has remained largely inefficient and expensive, however, costs are gradually decreasing as system quality and reliability increases. To encourage continued investment in solar energy, systems received a permanent exemption from Florida sales and use tax in 2005.

Proposed Changes

Section 1: Legislative findings and intent: This section provides legislative findings and intent. Generally, the Legislature finds that advancing the development of renewable energy efficiency and technologies is important for the state's future, its energy stability and diversity, its environment, and the protection of its citizens' public health. Moreover, the development of renewable energy technologies has a correlated effect in reducing the demand for foreign fuels. To assist in the widespread

commercialization and application of renewable energy, the findings promote marketing, among other things, to stimulate economic growth, to generate ongoing research and development, to use the abundance of natural and renewable energy sources. These objectives are in addition to using the state's ability to attract significant federal research and development funds for its general welfare.

Section 2: Short title: The bill provides that ss. 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3: Purpose: This act is intended to provide matching grants to stimulate in-state capital investment and promote statewide utilization of renewable technologies. In order to accomplish these goals, the targeted grants program is designed to: 1) advance renewable technologies, and 2) encourage the residential and commercial use of incentives, such as rebates, tax exemptions, and regulatory certainty.

Section 4: Definitions: The bill provides the following definitions:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.
(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.
(3) "Commission" means the Florida Public Service Commission.
(4) "Department" means the Department of Environmental Protection.
(5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.
(6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.
(7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.
(8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.
(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.
(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5: Renewable Energy Technologies Grant Program: The bill establishes within DEP the Renewable Energy Technologies Grant Program. The program provides renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies. Eligible entities for award consideration include: 1) municipalities and county governments, 2) established for-profit companies licensed to do business in the state, 3) in-state universities and colleges, 4) not-for-profit organizations, 5) other qualified persons, as determined by the department. Rulemaking authority is granted to DEP for adoption of application requirements, ranking application, and administering grant awards. Criteria are provided in the bill for DEP to consider when assessing applications for an award. It is also incumbent upon DEP to solicit the expertise of other state agencies and such solicited agencies shall be cooperative with DEP.

Section 6: Energy-Efficient Products Sales Tax Holiday: During the period from 12:01 a.m., October 5, 2006, through midnight, October 11, 2006, a tax-free week is established by the bill, and it shall be designated "Energy Efficiency Week." Specifically, the tax levied under ch. 212, F.S., may not be collected during this period on the sale of new energy-efficient products having a per product selling price of $1,500 or less. This exemption only applies to items that are for noncommercial home or personal use, and does not apply when the product is purchased for trade, business, or resale.

"Energy-efficient product" is defined as a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States Department of Energy as meeting or exceeding the requirements under the Energy Star Program of either agency. Purchases that are eligible for this exemption may not be made using a business or company credit or debit card or check. Any construction company, building contractor, or commercial business or entity that purchases or attempts to purchase the energy-efficient products exempt as provided in this section commits an unfair method of competition in violation of s. 501.204, F.S., which addresses unlawful acts and practices. In addition, the punishment for each violation is a civil penalty of up to $10,000, as provided in s. 501.2075, F.S.

Section 7: Solar Energy System Incentives Program: Under this program, three solar rebate incentives are created. From July 1, 2006, through June 30, 2010, any Florida resident who purchases and installs a solar photovoltaic system, a solar thermal system, or a solar thermal pool heater is eligible to apply. However, application for a rebate must be made within 90 days after the purchase, and each system must meet the specific criteria outlined in the bill.

In general, the new solar photovoltaic system must be 2 kilowatts or larger, and the new solar thermal system must provide at least 50 percent of a building's hot water consumption. For the specific eligibility requirements, s. 337.806 reads in part:

> (2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.
>
> (a) Eligibility requirements. A solar photovoltaic system qualifies for a rebate if:
>
> 1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.
>
> 2. The system complies with state interconnection standards as provided by the commission.
>
> 3. The system complies with all applicable building codes as defined by the local jurisdictional authority.
>
> (b) Rebate amounts. The rebate amount shall be set at $4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:
>
> 1. $20,000 for a residence.
>
> 2. $100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization.
>
> (3) SOLAR THERMAL SYSTEM INCENTIVE.
>
> (a) Eligibility requirements. A solar thermal system qualifies for a rebate if:
>
> 1. The system is installed by a state-licensed solar or plumbing contractor.
>
> 2. The system complies with all applicable building codes as defined by the local jurisdictional authority.
>
> (b) Rebate amounts. Authorized rebates for installation of solar thermal systems shall be as follows:
>
> 1. $500 for a residence.
>
> 2. $15 per 1,000 Btu for a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization including condominiums or apartment buildings. Btu must be verified by approved metering equipment.
>
> (4) SOLAR THERMAL POOL HEATER INCENTIVES.—
>
> (a) Eligibility requirements. – A solar thermal pool heater qualifies for a rebate if:
>
> 1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts. – Authorized rebates for installation of solar thermal pool heaters shall by $100 per installation.

Moreover, the total dollar amount of all DEP-issued rebates is subject to any fiscal year appropriation for the program. DEP will publish on a regular basis a running rebate fund balance for each fiscal year. If applications exceed the available funds, unfunded applications roll-over to the next year with priority consideration. DEP shall adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to develop rebate applications and administer the issuance of rebates.

Section 8: Florida Energy Council: The bill creates the Florida Energy Council within DEP as an energy advisory group. The council is to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on current and projected energy issues including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency and conservation. This diverse council shall be comprised of stakeholders, and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, environmental, consumer and public health use the principles of reliability, efficiency, affordability, and diversity in developing its recommendations. There will be nine voting members:

- The Secretary of DEP, or designee, serves as the council's chair
- The Chair of PSC, or designee, serves as the council's vice chair
- The Commissioner of Agriculture and Consumer Services, or designee
- Two members appointed by the Governor
- Two members appointed by the President of the Senate
- Two members appointed by the Speaker of the House of Representatives

Prior to September 1, 2006, all initial appointments shall be made. The appointments made by the Governor, the President of the Senate, the Speaker of the House of Representatives are for a term of two years, with members serving until their successors are appointed. Any vacancies are filled in the same manner as original appointments and are for the remainder of a vacated membership. Members are entitled to travel reimbursement and per diem, but they serve without compensation.

Additionally, DEP provides primary staff support to the council and it shall electronically record the meetings and preserve those recordings pursuant to chapters 119 and 257. Rulemaking authority is granted to DEP to implement the provisions of this section.

Section 9: Sales Tax Exemption: A sales tax exemption is created in s. 212.08, F.S., for equipment, machinery, and other materials for renewable energy technologies, and is available to a purchaser through a refund of previously paid taxes. This exemption is designed to assist in stimulating the development of in-state hydrogen technologies and biofuels. Enhancing the production, distribution and retail mechanisms supporting biofuels, this incentive may result in a reduction in the consumption of fossil fuels. There are currently four hydrogen fueling stations planned for installation, and those facilities are partially funded by DEP. Florida has no ethanol fuel production facilities or retail outlets selling ethanol blends to the public.

The bill creates the following definitions as used in this section:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products

as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

The bill provides that the in-state sale or use of the following items is excluded from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in tax each state fiscal year.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided by this subsection.

DEP is the designated lead agency for submitting the list of items eligible for the exemption to the Department of Revenue (DOR). The bill directs DEP, in consultation with DOR, to develop the application for exemption, along with minimal criteria for the application content. Applicants are to also submit a sworn statement of information accuracy and to the section requirements being met. An application processing schedule is also outlined in the bill.

Rulemaking is granted to DOR for governing the manner and form of the refund applications and to additionally establish guidelines for requisites of an affirmative showing of qualification for exemption.

Rulemaking is also granted to DEP to ensure the exemptions do not exceed the provided limits, and DEP shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

This exemption is repealed on July 1, 2010.

Section 10: Confidentiality and information sharing: This section allows for the sharing of information between DEP and DOR related to the sales tax exemption and investment tax credit.

Section 11: Corporate income tax: This is a conforming change.

Section 12: Renewable energy technologies investment tax credit: The bill establishes the renewable energy technologies tax credit. Definitions in this section mirror those used in s. 212.08(7) for biodiesel, ethanol, and hydrogen fuel cell. A term is added to this section for "eligible cost" which means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all tax payers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of

constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subsection.

The bill outlines and application process that is handled through DEP for this credit. Rulemaking authority is granted DOR relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

DEP shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13: Adjusted federal income: This section makes a conforming change.

Section 14: Ten-year site plans: Pursuant to s. 186.801, F.S., all major generating electric utilities are required to annually submit a Ten-Year Site Plan to the PSC for review. Each Ten-Year Site Plan contains projections of the utility's electric power needs for the next ten years and the general location of proposed power plant sites and major transmission facilities. As a result, the PSC performs a preliminary study of each Ten-Year Site Plan to determine whether it is "suitable" or "unsuitable." To aid in its review, the PSC receives comments from state, regional, and local planning agencies regarding various issues. Upon review completion, the PSC forwards its Ten-Year Site Plan review, to DEP for use in subsequent power plant siting proceedings.

To implement the provisions s. 186.801, F. S., the PSC has adopted Rules 25-22.070 through 25-22.072, F.A.C. These rules require electric utilities to file an annual Ten-Year Site Plans by April 1. However, utilities whose existing generating capacity is below 250 megawatts (MW) are exempt from this requirement unless the utility plans to build a new unit larger than 75 MW within the ten-year planning period.

In evaluating the 10-year site plans, the PSC is required to review:

- Need for electrical power in the area to be served.
- Anticipated environmental impact.
- Possible alternatives to the proposed plan.
- Views of appropriate local, state, and federal agencies.
- Consistency with the state comprehensive plan.
- Information of the state on energy availability and consumption.

The bill adds the "effect on fuel diversity within the state" to the above objectives considered by the PSC in evaluating the10-year site plans.

Section 15: Jurisdiction of the PSC: Section 366.04, F.S., provides that the jurisdiction of the PSC includes prescribing and enforcing safety standards for electric transmission and distribution. This bill adds the phrase "at a minimum" when describing the safety standards the PSC must adopt. This allows the PSC to adopt stricter safety standards than the National Electrical Safety Code (NESC) as needed to protect Florida's electric system from disasters.

Section 16: Powers of the PSC: Section 366.05(1), F.S., reads in part:

366.05 Powers.—

> (1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to

promote the convenience and welfare of the public and secure adequate service or facilities. . .

The bill amends this section to give the PSC the power to adopt construction standards that exceed the NESC in order to ensure the reliable provision of service. In addition, the PSC is given the power to order the replacement of plant by a public utility.

Section 366.05(8), F.S., gives the PSC power over the state's electrical grid, and the authority, following certain proceeding, to require the installation or repair of necessary facilities if inadequacies with respect to the grid exist. The bill amends this section to strengthen PSC authority to require utilities to build additional facilities or repair existing facilities if the PSC determines that the electric grid is inadequate with respect to "fuel diversity or fuel supply reliability."

Section 17: The bill requires the PSC to direct a study on Florida's electric transmission grid. The study shall examine the efficiency and reliability of power transfer and emergency contingency conditions. Additionally, the study must examine the hardening of infrastructure to address issues raised from the 2004 and 2005 hurricane seasons. The results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Sections 18 through 40: These sections amend the Florida Electrical Power Plant Siting Act (PPSA). On the recommendation of the Florida Energy Plan, the proposed changes are to streamline the siting process by setting new timelines, streamlining procedures, and streamlining the determination of consistency with land use, among other things.

Created by the Legislature in 1973, the PPSA provides for certification (licensure) of steam electric or solar power plants which are 75 megawatts or larger in size. The plants can be gas-fired, combined-cycle units, nuclear units, or others that are fueled by more conventional means. Combustion turbine units can be permitted in conjunction with a certified facility, or as an addition via the modification process, but as a stand alone, this type of unit does not trigger the certification process.

DEP is the lead agency for coordinating the siting process. Plant certification may include the plant's directly associated facilities, which are necessary for the construction and operation, such as natural gas pipeline, rail lines, roadways, and electrical transmission lines. Final certification is issued by the siting board (Governor & Cabinet).

Section 18: Definitions: The bill amends several definitions s. 403.503, F.S., in order to broaden, delete and conform terms as used in this section. However, noteworthy are the amendments to two terms: 1) The revision to "electrical power plant" clarifies that associated facilities to be included in the definition of plant are those that are owned by the applicant. This gives the applicant the option to include associated facilities not owned by the applicant. 2) The revision to "completeness" is amended to incorporate the concept of "sufficiency". This change combines two review processes.

Section 19: Department of Environmental Protection; powers and duties: The bill broadens DEP powers and duties by expanding its rulemaking authority to include construction as a component to be included as it sets forth rules for environmental precautions in relation to power plants. DEP has the authority to issue final orders when there is no certification hearing, resulting in a significant saving in overall licensing time. DEP is also given the authority to issue emergency orders when emergency conditions require a short turn-around time. Other additional powers and duties include acting as clerk for the siting board as well as administering and managing the terms and conditions of the certification order, supporting documents and records for the life of the facility.

Section 20: Application for permits: The bill amends s. 403.5055, F.S., to provide that DEP include in its project analysis copies of proposed permits under federally delegated or approved permit programs.

The bill modifies the section to require such inclusion only if the permit is available at the time DEP issues its project analysis.

Section 21: Applicability and certification: The bill amends s. 405.506, F.S., relating to applicability and certification to include "thresholds." The section is amended to exempt cogeneration facilities which are expanding by less than 35 megawatts. This will assist in the development and utilization of an additional resource. The term "maximum electrical generator rating" replaces the term "maximum normal generator nameplate rating" in order to more accurately reflect the term of art in the industry.

Section 22: Distribution of application: Section 403.5064, F.S., is amended to read "Application schedules" in lieu of "Distribution of application." The date of certification commencement shall begin when the applicant distributes the appropriate number of certification applications and submits the application fee pursuant to 403.518, F.S. This change in the date of commencement will result in a time savings of approximately 22 days because the distribution to the affected parties is done sooner. A provision is added to provide that any amendment made prior to certification will be addressed as part of the original certification proceeding; however, the amendment may create a good cause of altering the time limits.

Further, this section provides that within 7 days after DEP files its proposed schedule, the administrative law judge (ALJ) will issue an order establishing a schedule for matters contained in the proposed schedule. The bill also clarifies notice provisions in order to reference the new notice section.

Section 23: Appointment of administrative law judge: This section is amended to clarify that the ALJ has all powers and duties granted pursuant to chapter 120, F.S., and by the laws and rules of DEP.

Section 24: Determination of completeness: The bill amends this section to give the applicant 30 days rather than 15 days to respond to a notice of incompleteness. A statement of completeness shall be filed with the Division of Administrative Hearings (DOAH), the applicant, and the parties, within 40 days in lieu of 15 days, after filing an application. The bill outlines the procedure for an applicant to follow when DEP declares an application incomplete.

Section 25: Informational public meetings: Section 403.50663, F.S., is created to establish that a local government or a regional planning council in whose jurisdiction the proposed plant exist may hold an information public meeting to inform the public about the proposed site and its associated facilities. The meeting must be noticed not less than 5 days prior to the date; however, the failure to hold an informational public meeting or the procedure used for the informational meeting are not grounds for the alteration of any time limitation or grounds to deny or condition certification.

Further, the bill clarifies that it is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

Section 26: Land use consistency: Section 403.50665, F.S., is created to generally streamline the land use determination, and to require that the applicant includes a description in the application of land use consistency with existing land use plans and zoning ordinances. If a local government makes an affirmative determination that the site and or facilities are consistent with local land use, but a substantially affected individual disputes the local government's determination, that person has 15 days to file a petition disputing the determination.

If it is determined by the local government that the proposed site, or directly associated facility, does conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 27: Determination of Sufficiency: Section 403.5067, F.S., is repealed. This review is combined with the completeness review.

Section 28: Preliminary statement of issues, reports, project analyses, and studies: The bill amends s. 403.507, F.S., relating to preliminary statements of issues, reports, project analyses, and studies. It changes the date for the filing of preliminary statements of issues from 60 days after distribution of the application, to 40 days after the application has been determined complete. It now requires agency reports to be filed 100 days after the application has been determined complete, expediting the review process by approximately 32 days.

The bill also clarifies that the Department of Community Affairs shall address emergency management in its report, and water management district reports shall include issues related to impact on water resources, impact on regional water supply planning, and impact on district-owned lands and works.

The Department of Transportation (DOT) is added to the list of agencies that must address the impact of the proposed plant on matters within its jurisdiction. DOT is typically involved in the certification process, but its statutory addition as a reporting agency ties in with its addition to the list of parties to the proceeding. It also establishes DOT as an agency eligible for reimbursement from the application fee.

The bill deletes the provisions related to the PSC filing of its determination and relocates it to a separate section. Additionally, prior to DEP issuing its project analysis; the PSC must have made an affirmative determination of need. While the need determination is currently required prior to the certification hearing, this language is amended to provide for instances when a hearing may be canceled.

Section 29: Land use and certification hearings: The bill amends s. 403.508, F.S., relating to land use and certification hearings. The bill addresses both types of hearings:

(1) Land use hearing: provides that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follows such situations. Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board. The bill further readjusts processing time in order to conform to responses to determination of incompleteness. However, this does not impact the overall issuance of the final certification.

(2) Certification hearing: changes the date for the holding of the certification hearing to from 300 to 265 days after the filing of the application. The DEP analysis would have been filed approximately 95 days earlier. Moreover, according to DEP, this length of time is needed to account for the possibility of an application being incomplete as filed, but it was rendered complete before the deadline for the tolling of the time clock. This provision also provides adequate time to prepare for the hearing.

A key substantive change is the addition of a mechanism for the cancellation of the otherwise mandatory certification hearing. If there are no disputed issues of fact or law, no later than 29 days before the certification hearing, but with enough time to provide three days notice of canceling the hearing, DEP or the applicant may request that the certification hearing be canceled. The ALJ, upon request, can order cancellation of the hearing for a non-controversial project upon stipulation by all parties. The ALJ would relinquish jurisdiction, and DEP would prepare the Final Order. This new option would shorten the process by as much as four and a half months, and would save the applicant and the agencies expense.

The bill also makes numerous technical changes to this section, including the relocation of provisions to group related activities and improve the chronological sequencing of events. Additionally, DOT is added to the list of parties, and process deadlines are revised to conform to other deadline changes. The language regarding "public notice" has been relocated to a new notice section pertaining to the entire process, as opposed to just the hearing proceeding.

The bill also conforms existing provisions related to the conduct of the hearing, parties, and intervention, and retains existing provisions related to public participation and public hearings, though relevant dates are changed to conform to changes in the dates of the overall process.

Section 30: Final Disposition of the Application: The bill amends s. 403.509, F.S., relating to the final disposition of application. The bill adds a provision allowing DEP to issue the final order on certification, if the ALJ has cancelled the certification hearing. This would only apply if there are no controversial issues, and could save several months.

The bill requires the applicant to seek before, during or after, the certification any necessary land easements for state lands from the Board of Trustees or relevant water management district. The certification may be made contingent on the applicant receiving the appropriate interest.

This section also creates criteria for approval or denial of the application, which is drawn from the intent language, and criteria listed elsewhere in the act. In order to make the act internally consistent regarding federally delegated/approved permits, provisions related to these permits are deleted.

Section 31: Effect of Certification: The bill amends s. 403.511, F.S., relating to the effect of certification. The bill deletes language to conform to the provisions that allow the Secretary of DEP to sign certifications, under certain circumstances. Language is added to this section to clarify that local land use permits and zoning ordinances are preempted by the PPSA. This section further clarifies that federal permits are to be issued under their own program guidelines and not those of the Siting Board or PPSA. Subsection (8) is also added to this section and reads:

> (8) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 32: Filing of Notice of Certified Corridor Route: The bill creates s. 403.5112, F.S., relating to filing of notice of certified corridor route. This provision is drawn from s. 403.5312, F.S., contained in the Transmission Line Siting Act, but which technically applies to the PPSA, as well. This section provides that within 60 days after a directly associated linear facility is certified, the applicant must file notice of the certified route with DEP and the clerk of the circuit court in each county through which the corridor will pass.

The notice is to consist of maps and aerial photographs clearly showing the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. The clerk is to record the filing in the official record of the county for the duration of the certification, or until the applicant certifies to DEP and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the county, whichever is sooner.

Section 33: Postcertification Amendments: The bill creates s. 403.5113, F.S., related to post-certification amendments. This is essentially a technical addition clarifying the difference in required actions between amendments submitted by the applicant during the application review, and those submitted after certification. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

If subsequent to certification, a licensee proposes a material change to the certification, the licensee must submit to DEP a written request for amendment and a description of the proposed change to the application. DEP has 30 days to determine whether or not the proposed change requires the conditions of certification to be modified. If DEP concludes that the change would not require a modification of the conditions of certification, DEP must provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

If DEP concludes that the change would require a modification of the conditions of certification, DEP sends written notification to the licensee stating that the proposed changes require a request for modification.

Section 34: Public Notice; Costs of Proceeding: The bill amends s. 403.5115 F.S., relating to public notice. This language in this section conforms to requirements to other provisions, updates methods for notification to allow for notice as specified in ch. 120, F.S., and makes clarifications. The applicant is responsible for publishing and paying for the notices in newspapers of general circulation relating to its filings with DEP, hearings, the cancellation of hearings, modifications, and supplemental applications.

DEP is required to provide the notices in the manner specified by ch. 120, F.S., and provide copies to persons who have been placed on its mailing list pertaining to various filings and hearing, the cancellation of hearings and any notice of stipulations, proposed agency actions and petitions for modification.

Section 35: Review: The bill amends the judicial review provisions in s. 403.513, F.S. to conform its requirements to other provisions. The bill clarifies that when possible, separate appeals of the certification order and any DEP permit issued pursuant to a federally delegated or approved permit program may be consolidated for purposes of judicial review.

Section 36: Modification of Certification: Modifications of certification are frequently necessary, in part because a life-of-the-facility license was granted. However, not all changes at a certified facility necessitate a formal modification, rather, an approved amendment may suffice. A "modification" is any change in the certification order after issuance, including a change in the conditions of certification. For example, a condition might specify that the chemical treatment system for the facility only be allowed a 30 foot mixing zone, and if the applicant wishes to have a 40 foot mixing zone, a modification would be necessary. However, if a construction shed was to be moved and this was not mentioned in the conditions nor are there any foreseeable impacts, an amendment would be approved.

According to DEP, modifications can be approved by the Siting Board, but this authority is most frequently delegated to the Secretary of DEP. However, if a dispute arises, the decision-making authority reverts to the Siting Board.

The bill amends s. 403.516, F.S., relating to the modification of certification. This section makes edits to clarify and streamline unclear provisions related to modification of certifications. Additionally, it conforms requirements to other provisions regarding federally delegated or approved permits.

Section 37: Supplemental Applications for Sites Certified for Ultimate Site Capacity: The bill amends s. 403.517, F.S., relating to supplemental applications certified for ultimate site capacity. These applications are for certification of the construction of electrical power plants to be located at sites which have been previously certified for ultimate site capacity. Supplemental applications are limited to electrical power plants using a fuel type previously certified for the site.

This section is amended to add that these applications include all new directly associated facilities that support the construction and operation of the electrical power plant. The bill also simplifies and clarifies language regarding procedural steps for applications at facilities that have previously been certified, but

are expanding. Additionally, the definition of "ultimate site capacity" was deleted and transferred to the definitions section.

Section 38: Existing Electrical Power Plant Site Certification: The bill amends s. 403.5175, F.S., relating to existing electrical power plant site certification to make technical edits conforming this section to other sections of the PPSA.

Section 39: Disposition of Fees: For the siting of a power plant, the applicant must pay DEP a $2,500 fee upon filing the notice of intent and a fee not to exceed $200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of this fee goes to DEP for its costs associated with coordinating the review, acting on the application, and covering its associated costs. Twenty percent goes to DOAH to cover its costs associated with conducting the hearing. The remaining twenty-percent may be provided to various agencies to reimburse them for their costs associated with their participation in the proceeding.

The bill amends s. 403.518, F.S., relating to the disposition of fees to take into account the potential cancellation of the certification hearing. Currently, DOAH receives 20 percent of the application fee to cover its administrative costs. Under the new provisions, DOAH would receive 5 percent up front to cover its initial administration costs. DOAH would receive an additional 5 percent if a land use hearing is held and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will receive the 20 percent it currently receives. The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year. In other words, a grandfathering exists for certain applications in the process, i.e. those requiring cancellation of certification.

DEP shall establish rules for determining a certification modification fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

Section 40: Applicability of Revisions: The bill provides that any applicant for power plant certification under the PPSA is to be processed under the law applicable when the application was filed, except that provisions relating to the cancellation of the certification hearing, the provisions related to the final disposition of the application and issuance of the written order by the secretary of DEP, and notice of the cancellation of the certification hearing may apply to any application for power plant certification. This will have the effect of leaving the existing time frame in place for any application which is pending when the bill becomes law.

Section 41: Exclusive Forum for Determination of Need: The need determination process can occur prior to the filing of a certification application, or afterwards; however, it is usually recommended that it be commenced beforehand. Need determination is a formal process required under s. 403.519, F.S., and is conducted by the PSC. The PSC reviews the need for the generation capacity which the proposed facility would produce in relation to the needs of the region, and to the state as a whole. The PSC also looks at whether the facility would be the most cost-effective means of obtaining generating capacity. If the PSC makes a negative determination, or recommends that an alternative approach is more suitable, then either the pending application need not be submitted, or should be revised. If the application has already been submitted, then the certification application process comes to a halt.

Section 403.519(2), F.S., requires the PSC to publish notices in the newspaper of its need determination hearing 45 days before the date set for the hearing. The bill shifts this responsibility to the applicant and shortens the time frame to 21 days before the hearing. In addition, it states that the PSC shall continue to post a notice in the Florida Administrative Weekly at least seven days prior to the date of the hearing.

The bill amends s. 403.519(3), F.S., allowing the PSC to take into account the need for fuel diversity and supply reliability when making a need determination. The PSC currently includes fuel issues in its need determination proceeding, but the bill requires it to be addressed in the PSC's deliberations. The bill does

not specify if the need for fuel diversity and supply reliability refers to the state as a whole or to the specific applicant.

Section 42: Water Projects: The bill amends s. 403.885,F.S., adjusting the criteria for the water projects grant program.

Section 43: The bill provides an appropriation of $61,379 from the General Revenue Fund to DOR to administer the Energy-Efficient Products Sales Tax Holiday.

Section 44: Effective Date: This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 Provides legislative findings and intent.

Section 2 Creates s. 377.801, F.S., provides Short title.

Section 3 Creates s. 377.802, F.S., provides purpose.

Section 4 Creates s. 377.803, F.S., provides definitions.

Section 5 Creates s. 377.804, F.S., Renewable Energy Technologies Grant Program.

Section 6 Creates s. 377.805, F.S., Energy-Efficient Products Sales Tax Holiday.

Section 7 Creates s. 377.806, F.S., Solar Energy Systems Rebate Program.

Section 8 Creates s. 377.901, F.S., Florida Energy Council.

Section 9 Creates s. 212.08(7)(ccc), F.S., sales tax exemption for equipment, machinery and other renewable energy technologies.

Section 10 Adds s. 213.053(7)(y), F.S., relating to confidentiality and information sharing.

Section 11 Amends s. 220.02(8), F.S., relating to tax credits against corporate income tax or franchise tax.

Section 12 Creates s. 220.192, F.S., Renewable energy technologies investment tax credit.

Section 13 Amends s. 220.13, F.S., relating to definition of "adjusted federal income."

Section 14 Amends s. 186.801(2), F.S., relating to ten-year site plan.

Section 15 Amends s. 366.04(6), F.S., relating to jurisdiction of the Public Service Commission.

Section 16 Amends s. 366.05(1) and (8), F.S., related to powers of the Public Service Commission.

Section 17 Requires the Public Service Commission to direct a study.

Section 18 Amends s. 403.503, F.S., provides definitions for the Florida Electrical Power Plant Siting Act.

Section 19 Amends s. 403.504, F.S., relating to powers and duties of the Department of Environmental Protection.

Section 20 Amends s. 403.5505, F.S., relation to applications for permits pursuant to s. 403.0885, F.S. (Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program).

Section 21 Amends s. 403.506, F.S., relating to applicability, thresholds, and certification.

Section 22 Amends s. 403.5064, F.S., relating to distribution of certification application and related schedule.

Section 23 Amends s. 403.5065, F.S., relating to appointment, powers, and duties of an administrative law judge.

Section 24 Amends s. 403.5066, F.S., relating to determination of completeness.

Section 25 Creates s. 403.50663, F.S., relating to informational public meetings.

Section 26 Creates s. 403.50665, F.S., relating to land use consistency determination.

Section 27 Repeals s. 403.5067, F.S., determination of sufficiency.

Section 28 Amends s. 403.507, F.S., preliminary statement of issues, reports, project analyses, and studies.

Section 29 Amends s. 403.508, F.S., relating to land use and certification hearings.

Section 30 Amends s. 403.509, F.S., relating to final disposition of the application.

Section 31 Amends s. 403.511, F.S., relating to effect of certification.

Section 32 Creates s. 403.5112, F.S., relating to filing of notice of certified corridor route.

Section 33 Creates s. 403.5113, F.S., relating to post certification amendments.

Section 34 Amends s. 403.5115, F.S., relating to public notice and costs of proceeding.

Section 35 Amends s. 403.513, F.S., relating to judicial review.

Section 36 Amends s. 403.516, F.S., relating to modification of certification.

Section 37 Amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity.

Section 38 Amends s. 403.5175, F.S., relating to electrical power plant site certifications.

Section 39 Amends s. 403.518, F.S., relating to fees and disposition.

Section 40 Provides for the applicability of revisions to the Power Plant Siting Act.

Section 41 Amends s. 403.519, F.S., relating to determination of need.

Section 42 Amends s. 403.885, F.S., relating to water projects grant criteria.

Section 43 Provides an appropriation to administer the Energy-Efficient Products Sales Tax Holiday.

Section 44 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	($11.0m)	($14.3m)
State Trust	(Insignificant)	(Insignificant)
Total	($11.0m)	($14.3m)

2. Expenditures:

Renewable Energy Technologies Grant Program
According to DEP, there will be recurring costs associated with administering the programs provided for under the act. At this time, the Energy Office staff time is paid through a grant from the United States Department of Energy and administering grant programs would be an allowable cost under the federal grant. However, the additional workload may create a need for hiring additional staff.

Solar Energy System Incentives Program
The fiscal impact of the Solar Energy System Incentives Program is indeterminate at this time. The availability of the rebates is subject to the amount appropriated to the program each fiscal year. DEP will incur some expenses associated with administering this program.

Florida Energy Council
The Energy Council may incur costs associated with conducting its duties, and DEP may incur administrative costs associated with staffing the council. There is no appropriation for these expenses.

Sales Tax Exemption and Corporate Income Tax Credit Administration
According to DEP, it will either administer the tax incentive program or contract with an outside organization to do so. The costs associated with this incentive are recurring in nature. The Energy Office staff is paid through a grant from the U.S. Department of Energy and administration of a tax incentive program for biofuels and hydrogen would be allowable under the federal grant. However, the additional workload may create a need for hiring additional staff.

According to DOR, it will need one additional position at a recurring cost of $48,708 to administer these programs. For the 2006-2007 fiscal year, DOR expects to incur $4,834 in non-recurring expenses.

Public Service Commission
According to PSC, it may see an increased workload as a result of the additional authority monitoring system reliability as it relates to fuel diversity. The PSC will also incur costs related to the study it is required to direct.

Power Plant Siting Act
For the siting of a power plant, an applicant must pay DEP a $2,500 fee upon filing the notice of intent, and a fee not to exceed $200,000 when filing the application. In addition, there are fees

associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of the fees are allocated to DEP to cover its review, the processing of the application, and other associated costs.

Twenty percent of the fees are allocated to DOAH to cover its administrative costs associated with conducting the hearing. However, under this bill, DOAH will receive 5 percent up front to cover its initial administration costs, an additional 5 percent if a land use hearing is held, and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will be allocated the 20 percent it currently receives.

The remaining twenty percent may be provided to various agencies to reimburse them for their costs associated with their participation in a PPSA proceeding.

The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year.

Other Costs

DEP and DOR will incur expenses associated with the rulemaking requirements. In addition, DEP and the PSC may incur expenses associated with revising their current rules to conform to the statutory changes.

DEP, DOR, and the PSC will also incur some costs implementing various portions of the bill and administering various programs. Among these costs are those that will be incurred by DOR to administer the Energy-Efficient Products Sales Tax Holiday. However, all of these costs are indeterminate at this time.

The cost of the grant program is limited to the amount appropriated each year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, and the sales tax exemptions for renewable energy technologies will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	($0.2m)	($0.1m)
Local Gov't. Half Cent	($0.5m)	($0.3m)
Local Option	($0.5m)	($0.3m)
Total Local Impact	($1.2m)	($0.7m)

Local governments would be eligible to receive grants under the Renewable Energy Technologies Grant Program.

2. Expenditures:

In the long-run, local governments may save funds as a result of canceling the certification hearing under the PPSA; however, local governments may also incur expenses related to holding informational public meetings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax exemptions and tax credits included in this bill will reduce the private sector's tax burden on certain items used for the production of renewable energy technologies.

Persons that purchase the solar energy items covered by this bill will benefit by receiving a rebate. Also, persons that purchase the items covered by this bill during Energy Efficiency Week may save money by not having to pay a sales tax. In addition, the solar rebates and the Energy-Efficient Products Sales Tax Holiday may prompt some consumers to purchase more of the eligible items, thereby causing an increase in the number of sales by Florida retailers.

Power plant siting applicants could realize a direct economic benefit from a streamlined permitting process, including the ability to begin construction at an earlier date.

D. FISCAL COMMENTS:

The bill does not contain an appropriation for the expenses related to the Florida Energy Council.

HB 5001, the General Appropriations Act, contains a $5 million General Revenue appropriation for the Solar Energy System Rebates Program. There is also an appropriation of $15 million ($8.6m in General Revenue and $6.4 in Trust) for Renewable Energy Technology Grants including $5 million (GR) for the Farm to Fuel program.

The bill provides an appropriation of $61,379 from the General Revenue Fund to DOR to administer the Energy-Efficient Products Sales Tax Holiday.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority in the following instances:

DEP may adopt rules:

a. to administer the Renewable Energy Technologies Grant Program.
b. to designate rebate amounts and administer the issuance of Solar Energy Systems Incentive Program.
c. to implement provisions related to the Florida Energy Council.
d. to implement guidelines, rules, and application materials for the Renewable Energy Technologies Investment Tax Credit.
e. to ensure sales tax exemptions do not exceed the provided limits, regularly publish the amount of sales tax remaining in each fiscal year.

f. to determine the appropriate fee for a certificate modification under the Florida Electric Power Plant Siting Act.
g. to amend its power plant siting rules to conform to change to the Florida Electric Power Plant Siting Act.
h. to include "construction" as a component to be included in rules for environmental precautions in relation to the PPSA.

DOR is required to adopt rules regarding the manner and form of sales tax refund applications and may establish guidelines for an affirmative showing of qualification for exemptions. Also, DOR has the authority to adopt rules relating to forms required to claim the Renewable Energy Technologies Investment Tax Credit, the requirements and basis for establishing an entitlement to a credit, and examination and audit procedures required to administer the credit.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On line 279, the bill provides that during the sales tax holiday, the tax levied under ch. 212, F.S., may not, be levied. This language is permissive. In order to provide that the tax cannot be levied, this language should be changed to shall not.

On lines 468 through 473, the bill provides a sales tax exemption for materials used in the distribution of ethanol from E10 to E85; however, the exemption for gasoline fueling station pump retrofits for ethanol applies from E10 through E100. This is a consistency concern.

Other Comments

The PSC may need rulemaking authority to amend some of its current rules to conform to provisions contained in this bill.

According to the PSC, the January 30, 2007 deadline to perform all the study components may be difficult to achieve. Even with the bill taking effect upon becoming law, the PSC will only have seven to eight months to perform the required study and get the report approved by the Commissioners. The PSC is currently working with the Florida Reliability Coordinating Council (FRCC) on a new transmission planning process, and this involvement may enhance the proposed study on Florida's electric transmission grid. The purpose of the new FRCC transmission planning process is to increase coordination among the FRCC members in an effort to improve the overall transmission planning and to provide a better transmission expansion plan from a statewide perspective. The utilities will file their first reports utilizing this new planning process in this month (April 2006). Additionally, the PSC has opened a docket proposing rules governing the placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground, to address the effects of extreme weather events.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications adopted a strike-all amendment and nine amendments to the strike-all. These amendments provided the following:

A) Renewable Energy and Energy Efficiency Act:
1. Amends definition of "renewable energy resource" to more clearly specify targeted resources.
2. Modifies grant program language to clarify criteria and DEP duties.
3. Removes the energy-efficient appliance rebate program and creates the new Energy-Efficient Products Sales Tax Holiday.

4. Revises language to incorporate concepts into the existing solar energy rebate program, including providing incentives for solar pool heaters, setting rebate amounts, establishing eligibility criteria, and setting rebate caps.

B) Florida Energy Council

1. Adds the Commissioner of Agriculture and Consumer Services to the membership of the council.
2. Adds that the Secretary of DEP, the Chair of the PSC, and the Commissioner of DACS may appoint a designee.
3. Adds that the Council's recommendations shall be guided by the principles of reliability, efficiency, affordability, and diversity.

C) Tax Incentives

1. Amends definitions of "Biodiesel" and "Ethanol" to reflect more accepted definitions of those terms, and revises related concepts to clarify what is eligible for tax incentives.
2. Makes technical corrections for proper operation of the tax programs.

D) Public Service Commission

1. Clarifies the PSC is to direct a broad study all forms of system hardening.

E) Power Plant Siting Act

1. Clarifies definitions.
2. Clarifies the interaction with federal permit programs.
3. Amends the applicability section to exempt cogeneration facilities which are expanding by less than 35 megawatts.
4. Changes the section on completeness to give the applicant 30 days, rather than 15, to respond to a notice of incompleteness. Other formatting changes were made to make this section clearer.
5. Streamlines the process on the determination of consistency with land use to ensure that the applicant files the necessary information, and that the local government's abilities in issuing a statement of inconsistency are protected.

On April 21, 2006, the Fiscal Council passed HB 1473 CS with four amendments that made the following revisions to the bill:

- Limited the "Energy-Efficient Products Sales Tax Holiday" to one year;
- Clarified that the sales tax exemption is for new energy-efficient products;
- Provided that eligible products are limited to those that qualify for the Energy Star Programs;
- Provided that purchases may not be made using a business or company credit or debit card or check;
- Provided penalties for businesses that buy products tax-free;
- Provided adjustments to the water projects grant criteria; and
- Provided an appropriation of $61,379 from the General Revenue Fund to the Department of Revenue to administer the Energy-Efficient Products Sales Tax Holiday.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendments adopted by the Fiscal Council.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to energy; providing legislative findings and intent; creating s. 377.801, F.S.; creating the "Florida Renewable Energy Technologies and Energy Efficiency Act"; creating s. 377.802, F.S.; stating the purpose of the act; creating s. 377.803, F.S.; providing definitions; creating s. 377.804, F.S.; creating the Renewable Energy Technologies Grants Program; providing program requirements and procedures, including matching funds; requiring the Department of Environmental Protection to adopt rules and coordinate with the Department of Agriculture and Consumer Services; requiring joint departmental approval for the funding of any project; creating s. 377.805, F.S.; establishing an energy-efficient products sales tax holiday; specifying a period during which the sale of energy-efficient products is exempt from certain tax; providing a limitation; providing a definition; prohibiting purchase of products

by certain payment methods; providing that certain purchases or attempts to purchase are unfair methods of competition and punishable as such; creating s. 377.806, F.S.; creating the Solar Energy System Incentives Program; providing program requirements, procedures, and limitations; requiring the Department of Environmental Protection to adopt rules; creating s. 377.901, F.S.; creating the Florida Energy Council within the Department of Environmental Protection; providing purpose and composition; providing for appointment of members and terms; providing for reimbursement for travel expenses and per diem; requiring the department to provide certain services to the council; providing rulemaking authority; amending s. 212.08, F.S.; providing definitions for the terms "biodiesel," "ethanol," and "hydrogen fuel cells"; providing tax exemptions in the form of a rebate for the sale or use of certain equipment, machinery, and other materials for renewable energy technologies; providing eligibility requirements and tax credit limits; directing the Department of Revenue to adopt rules; directing the Department of Environmental Protection to determine and publish certain information relating to such exemptions; providing for expiration of the exemption; amending s. 213.053, F.S.; authorizing the Department of Revenue to share certain information with the Department of Environmental Protection for specified purposes; amending s. 220.02, F.S.; providing the order of application of the renewable energy technologies investment tax credit;

creating s. 220.192, F.S.; providing definitions; establishing a corporate tax credit for certain costs related to renewable energy technologies; providing eligibility requirements and credit limits; providing certain authority to the Department of Environmental Protection and the Department of Revenue; directing the Department of Environmental Protection to determine and publish certain information; providing for expiration of the tax credit; amending s. 220.13, F.S.; providing an addition to the definition of "adjusted federal income"; amending s. 186.801, F.S.; revising the provisions of electric utility 10-year site plans to include the effect on fuel diversity; amending s. 366.04, F.S.; revising the safety standards for public utilities; amending s. 366.05, F.S.; authorizing the Public Service Commission to adopt certain construction standards and make certain determinations; directing the commission to conduct a study and provide a report by a certain date; amending s. 403.503, F.S.; revising and providing definitions applicable to the Florida Electrical Power Plant Siting Act; amending s. 403.504, F.S.; providing the Department of Environmental Protection with additional powers and duties relating to the Florida Electrical Power Plant Siting Act; amending s. 403.5055, F.S.; revising provisions for certain permits associated with applications for electrical power plant certification; amending s. 403.506, F.S.; revising provisions relating to applicability and certification of certain power plants;

amending s. 403.5064, F.S.; revising provisions for distribution of applications and schedules relating to certification; amending s. 403.5065, F.S.; revising provisions relating to the appointment of administrative law judges and specifying their powers and duties; amending s. 403.5066, F.S.; revising provisions relating to the determination of completeness for certain applications; creating s. 403.50663, F.S.; authorizing certain local governments and regional planning councils to hold an informational public meeting about a proposed electrical power plant or associated facilities; providing requirements and procedures therefor; creating s. 403.50665, F.S.; requiring local governments to file certain land use determinations; providing requirements and procedures therefor; repealing s. 403.5067, F.S., relating to the determination of sufficiency for certain applications; amending s. 403.507, F.S.; revising required preliminary statement provisions for affected agencies; requiring a report as a condition precedent to the project analysis and certification hearing; amending s. 403.508, F.S.; revising provisions relating to land use and certification hearings, including cancellation and responsibility for payment of expenses and costs; requiring certain notice; amending s. 403.509, F.S.; revising provisions relating to the final disposition of certain applications; providing requirements and provisions with respect thereto; amending s. 403.511, F.S.; revising provisions relating to the effect of

certification for the construction and operation of proposed electrical power plants; providing that issuance of certification meets certain coastal zone consistency requirements; creating s. 403.5112, F.S.; requiring filing of notice for certified corridor routes; providing requirements and procedures with respect thereto; creating s. 403.5113, F.S.; authorizing postcertification amendments for power plant site certification applications; providing requirements and procedures with respect thereto; amending s. 403.5115, F.S.; requiring certain public notice for activities relating to electrical power plant site application, certification, and land use determination; providing requirements and procedures with respect thereto; directing the Department of Environmental Protection to maintain certain lists and provide copies of certain publications; amending s. 403.513, F.S.; revising provisions for judicial review of appeals relating to electrical power plant site certification; amending s. 403.516, F.S.; revising provisions relating to modification of certification for electrical power plant sites; amending s. 403.517, F.S.; revising provisions relating to supplemental applications for sites certified for ultimate site capacity; amending s. 403.5175, F.S.; revising provisions relating to existing electrical power plant site certification; revising the procedure for reviewing and processing applications; requiring additional information to be included in certain applications; amending s. 403.518,

F.S.; revising the allocation of proceeds from certain fees collected; providing for reimbursement of certain expenses; directing the Department of Environmental Protection to establish rules for determination of certain fees; eliminating certain operational license fees; providing for the application, processing, approval, and cancellation of electrical power plant certification; amending s. 403.519, F.S.; directing the Public Service Commission to consider fuel diversity and reliability in certain determinations; amending 403.885, F.S.; revising provisions and requirements relating to the stormwater management, wastewater management, and water restoration grants program; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative findings and intent.--The Legislature finds that advancing the development of renewable energy technologies and energy efficiency is important for the state's future, its energy stability, and the protection of its citizens' public health and its environment. The Legislature finds that the development of renewable energy technologies and energy efficiency in the state will help to reduce demand for foreign fuels, promote energy diversity, enhance system reliability, reduce pollution, educate the public on the promise of renewable energy technologies, and promote economic growth. The Legislature finds that there is a need to assist in the

development of market demand that will advance the commercialization and widespread application of renewable energy technologies. The Legislature further finds that the state is ideally positioned to stimulate economic development through such renewable energy technologies due to its ongoing and successful research and development track record in these areas, an abundance of natural and renewable energy sources, an ability to attract significant federal research and development funds, and the need to find and secure renewable energy technologies for the benefit of its citizens, visitors, and environment.

Section 2. Section 377.801, Florida Statutes, is created to read:

377.801 Short title.--Sections 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3. Section 377.802, Florida Statutes, is created to read:

377.802 Purpose.--This act is intended to provide matching grants to stimulate capital investment in the state and to enhance the market for and promote the statewide utilization of renewable energy technologies. The targeted grants program is designed to advance the already growing establishment of renewable energy technologies in the state and encourage the use of other incentives such as tax exemptions and regulatory certainty to attract additional renewable energy technology producers, developers, and users to the state. This act is also intended to provide incentives for the purchase of energy-

efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings.

Section 4. Section 377.803, Florida Statutes, is created to read:

377.803 Definitions.--As used in ss. 377.801-377.806, the term:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.

(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.

(3) "Commission" means the Florida Public Service Commission.

(4) "Department" means the Department of Environmental Protection.

(5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.

(6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.

(8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that

require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.

(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.

(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5. Section 377.804, Florida Statutes, is created to read:

377.804 Renewable Energy Technologies Grants Program.--

(1) The Renewable Energy Technologies Grants Program is established within the department to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies.

(2) Matching grants for renewable energy technology demonstration, commercialization, research, and development projects may be made to any of the following:

(a) Municipalities and county governments.

(b) Established for-profit companies licensed to do business in the state.

(c) Universities and colleges in the state.

(d) Utilities located and operating within the state.

(e) Not-for-profit organizations.

(f) Other qualified persons, as determined by the department.

(3) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to provide for application requirements, provide for ranking of applications, and administer the awarding of grants under this program.

(4) Factors the department shall consider in awarding grants include, but are not limited to:

(a) The availability of matching funds or other in-kind contributions applied to the total project from an applicant. The department shall give greater preference to projects that provide such matching funds or other in-kind contributions.

(b) The degree to which the project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies.

(c) The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory that supports the proposal.

(d) The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

(e) The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential.

(f) The degree to which a project demonstrates efficient use of energy and material resources.

(g) The degree to which the project fosters overall understanding and appreciation of renewable energy technologies.

(h) The ability to administer a complete project.

(i) Project duration and timeline for expenditures.

(j) The geographic area in which the project is to be conducted in relation to other projects.

(k) The degree of public visibility and interaction.

(5) The department shall solicit the expertise of other state agencies in evaluating project proposals. State agencies shall cooperate with the Department of Environmental Protection and provide such assistance as required.

(6) The department shall coordinate and actively consult with the Department of Agriculture and Consumer Services during the review and approval process of grants relating to bioenergy projects for renewable energy technology, and the departments shall jointly determine the grant awards to these bioenergy projects. No grant funding shall be awarded to any bioenergy project without such joint approval. Factors for consideration in awarding grants may include, but are not limited to, the degree to which:

(a) The project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for bioenergy.

(b) The project produces bioenergy from Florida-grown crops or biomass.

(c) The project demonstrates efficient use of energy and material resources.

(d) The project fosters overall understanding and appreciation of bioenergy technologies.

(e) Matching funds and in-kind contributions from an applicant are available.

(f) The project duration and the timeline for expenditures are acceptable.

(g) The project has a reasonable assurance of enhancing the value of agricultural products or will expand agribusiness in the state.

(h) Preliminary market and feasibility research has been conducted by the applicant or others and shows there is a reasonable assurance of a potential market.

Section 6. Section 377.805, Florida Statutes, is created to read:

377.805 Energy-efficient products sales tax holiday.--The period from 12:01 a.m., October 5, through midnight, October 11, 2006, shall be designated "Energy Efficiency Week," and the tax levied under chapter 212 may not be collected on the sale of a new energy-efficient product having a selling price of $1,500 or less per product during that period. This exemption applies only when the energy-efficient product is purchased for noncommercial home or personal use and does not apply when the product is purchased for trade, business, or resale. As used in this section, the term "energy-efficient product" means a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States

Department of Energy as meeting or exceeding the requirements under the Energy Star Program of either agency. Purchases made under this section may not be made using a business or company credit or debit card or check. Any construction company, building contractor, or commercial business or entity that purchases or attempts to purchase the energy-efficient products as exempt under this section commits an unfair method of competition in violation of s. 501.204, punishable as provided in s. 501.2075.

Section 7. Section 377.806, Florida Statutes, is created to read:

377.806 Solar Energy System Incentives Program.--

(1) PURPOSE.--The Solar Energy System Incentives Program is established within the department to provide financial incentives for the purchase and installation of solar energy systems. Any resident of the state who purchases and installs a new solar energy system of 2 kilowatts or larger for a solar photovoltaic system, a solar energy system that provides at least 50 percent of a building's hot water consumption for a solar thermal system, or a solar thermal pool heater, from July 1, 2006, through June 30, 2010, is eligible for a rebate on a portion of the purchase price of that solar energy system.

(2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar photovoltaic system qualifies for a rebate if:

1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.

2. The system complies with state interconnection standards as provided by the commission.

3. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--The rebate amount shall be set at $4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:

1. Twenty thousand dollars for a residence.

2. One hundred thousand dollars for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.

(3) SOLAR THERMAL SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar thermal system qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--Authorized rebates for installation of solar thermal systems shall be as follows:

1. Five hundred dollars for a residence.

2. Fifteen dollars per 1,000 Btu for a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings. Btu must be verified by approved metering equipment.

(4) SOLAR THERMAL POOL HEATER INCENTIVE.—-

(a) Eligibility requirements.--A solar thermal pool heater qualifies for a rebate if the system is installed by a state-licensed solar or plumbing contractor and the system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amount.--Authorized rebates for installation of solar thermal pool heaters shall be $100 per installation.

(5) APPLICATION.--Application for a rebate must be made within 90 days after the purchase of the solar energy equipment.

(6) REBATE AVAILABILITY.--The department shall determine and publish on a regular basis the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year. Requests for rebates received in a fiscal year that are processed during the following fiscal year shall be given priority over requests for rebates received during the following fiscal year.

(7) RULES.--The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to develop rebate applications and administer the issuance of rebates.

Section 8. Section 377.901, Florida Statutes, is created to read:

377.901 Florida Energy Council.--

(1) The Florida Energy Council is created within the Department of Environmental Protection to provide advice and counsel to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the energy policy of the state. The council shall advise the state on current and projected energy issues, including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency, and conservation. In developing its recommendations, the council shall be guided by the principles of reliability, efficiency, affordability, and diversity.

(2)(a) The council shall be comprised of a diversity of stakeholders and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, persons representing environmental, consumer, and public health interests, and others.

(b) The council shall consist of nine voting members as follows:

1. The Secretary of Environmental Protection, or his or her designee, who shall serve as chair of the council.

2. The chair of the Public Service Commission, or his or her designee, who shall serve as vice chair of the council.

3. One member shall be the Commissioner of Agriculture, or his or her designee.

4. Two members who shall be appointed by the Governor.

5. Two members who shall be appointed by the President of the Senate.

6. Two members who shall be appointed by the Speaker of the House of Representatives.

(c) All initial members shall be appointed prior to September 1, 2006. Appointments made by the Governor, the President of the Senate, and the Speaker of the House of Representatives shall be for terms of 2 years each. Members shall serve until their successors are appointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the term that is vacated.

(d) Members shall serve without compensation but are entitled to reimbursement for travel expenses and per diem related to council duties and responsibilities pursuant to s. 112.061.

(3) The department shall provide primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recording shall be preserved pursuant to chapters 119 and 257.

(4) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 9. Paragraph (ccc) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ccc) Equipment, machinery, and other materials for renewable energy technologies.--

1. As used in this paragraph, the term:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen-rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

2. The sale or use of the following in the state is exempt from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in taxes each state fiscal year.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in taxes each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in taxes each state fiscal year. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided in this sub-subparagraph.

3. The Department of Environmental Protection shall provide to the department a list of items eligible for the exemption provided in this paragraph.

4.a. The exemption provided in this paragraph shall be available to a purchaser only through a refund of previously paid taxes.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Environmental Protection. The application shall be developed by the Department of Environmental Protection, in consultation with the department, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

(III) The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV) A sworn statement that the information provided is accurate and that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Environmental Protection shall review the application and shall notify the applicant of any deficiencies. Upon receipt of a completed application, the Department of Environmental Protection shall evaluate the application for exemption and issue a written certification that the applicant is eligible for a refund or issue a written denial of such certification within 60 days after receipt of the application.

The Department of Environmental Protection shall provide the department with a copy of each certification issued upon approval of an application.

d. Each certified applicant shall be responsible for forwarding a certified copy of the application and copies of all required documentation to the department within 6 months after certification by the Department of Environmental Protection.

e. The provisions of s. 212.095 do not apply to any refund application made pursuant to this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval by the department.

f. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

g. The Department of Environmental Protection shall be responsible for ensuring that the exemptions do not exceed the limits provided in subparagraph 2.

5. The Department of Environmental Protection shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

6. This paragraph expires July 1, 2010.

Section 10. Paragraph (y) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.--

(7) Notwithstanding any other provision of this section, the department may provide:

(y) Information relative to ss. 212.08(7)(ccc) and 220.192 to the Department of Environmental Protection for use in the conduct of its official business.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 11. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated in s. 220.192.

Section 12. Section 220.192, Florida Statutes, is created to read:

220.192 Renewable energy technologies investment tax credit.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(ccc).

(b) "Eligible costs" means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and

equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subparagraph.

(c) "Ethanol" means ethanol as defined in s. 212.08(7)(ccc).

(d) "Hydrogen fuel cell" means hydrogen fuel cell as defined in s. 212.08(7)(ccc).

(2) TAX CREDIT.--For tax years beginning on or after January 1, 2007, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2007, and ending December 31, 2010, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2007, and ending December 31, 2012, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

(3) APPLICATION PROCESS.--Any corporation wishing to obtain tax credits available under this section must submit to the Department of Environmental Protection an application for tax credit that includes a complete description of all eligible

costs for which the corporation is seeking a credit and a description of the total amount of credits sought. The Department of Environmental Protection shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach the Department of Environmental Protection's certification to the tax return on which the credit is claimed. The Department of Environmental Protection shall be responsible for ensuring that the corporate income tax credits granted in each fiscal year do not exceed the limits provided for in this section. The Department of Environmental Protection is authorized to adopt the necessary rules, guidelines, and application materials for the application process.

(4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.--

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, that are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as

a result of either an audit or examination or from information received from the Department of Environmental Protection, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

(c) The Department of Environmental Protection may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. The Department of Environmental Protection shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(d) The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall file an amended return or other report as provided in this paragraph within 60 days after a final order is issued following proceedings.

(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

(5) RULES.--The Department of Revenue shall have the authority to adopt rules relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(6) PUBLICATION.--The Department of Environmental Protection shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.--

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.--There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state

of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 2005.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on June 30, 2005.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under s. 220.192.

Section 14. Subsection (2) of section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.--

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric

utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c) ~~(b)~~ The anticipated environmental impact of each proposed electrical power plant site.

(d) ~~(c)~~ Possible alternatives to the proposed plan.

(e) ~~(d)~~ The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f) ~~(e)~~ The extent to which the plan is consistent with the state comprehensive plan.

(g) ~~(f)~~ The plan with respect to the information of the state on energy availability and consumption.

Section 15. Subsection (6) of section 366.04, Florida Statutes, is amended to read:

366.04 Jurisdiction of commission.--

(6) The commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. In adopting safety standards, the commission shall, at a minimum:

(a) Adopt the 1984 edition of the National Electrical Safety Code (ANSI C2) as initial standards; and

(b) Adopt, after review, any new edition of the National Electrical Safety Code (ANSI C2).

The standards prescribed by the current 1984 edition of the National Electrical Safety Code (ANSI C2) shall constitute acceptable and adequate requirements for the protection of the safety of the public, and compliance with the minimum requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. However, nothing herein shall be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10).

Section 16. Subsections (1) and (8) of section 366.05, Florida Statutes, are amended to read:

366.05 Powers.--

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements,

including the ability to adopt construction standards that exceed the National Electrical Safety Code for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, including inadequacies in fuel diversity or fuel supply reliability, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and

transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

Section 17. The Florida Public Service Commission shall direct a study of the electric transmission grid in the state. The study shall look at electric system reliability to examine the efficiency and reliability of power transfer and emergency contingency conditions. In addition, the study shall examine the strengthening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. A report of the results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Section 18. Subsections (5), (8), (9), (12), (18), (24), and (27) of section 403.503, Florida Statutes, are amended, subsections (16) through (28) are renumbered as (17) through (29), respectively, and a new subsection (16) is added to that section, to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.--As used in this act:

(5) "Application" means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information ~~proceeding and shall include the documents necessary for the department to render a decision on any permit~~

~~required pursuant to any federally delegated or approved permit program~~.

(8) "Completeness" means that the application has addressed all applicable sections of the prescribed application format, and ~~but does not mean~~ that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(9) "Corridor" means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the right-of-way have been acquired by the licensee ~~applicant~~, the boundaries of the area certified shall narrow to only that land within the boundaries of the right-of-way.

(12) "Electrical power plant" means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act, or any unit capacity expansion of 35 megawatts or less of an existing exothermic reaction

cogeneration unit that was originally built under a power plant siting act exemption. This exemption does not apply if the unit uses oil or natural gas for purposes other than startup. This term ~~and~~ includes associated facilities to be owned by the licensee which directly support the construction and operation of the electrical power plant such as fuel unloading facilities, pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities, water or wastewater transport pipelines, construction, maintenance and access roads, railway lines necessary for transport of construction equipment or fuel for the operation of the facility, and those associated transmission lines owned by the licensee which connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect~~, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act~~. Associated facilities ~~An associated transmission line~~ may include, at the applicant's option, offsite associated facilities that will not be owned by the applicant and any proposed terminal or intermediate substations or substation expansions connected to the associated transmission line.

(16) "Licensee" means an applicant that has obtained a certification order for the subject project.

(19)~~(18)~~ "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, zoning ordinance, land development code, or

comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(25) ~~(24)~~ "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(28) ~~(27)~~ "Ultimate site capacity" means the maximum generating capacity for a site as certified by the board. ~~"Sufficiency" means that the application is not only complete but that all sections are sufficient in the comprehensiveness of data or in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.~~

Section 19. Subsections (1), (7), (9), and (10) of section 403.504, Florida Statutes, are amended, and new subsections (9), (10), (11), and (12) are added to that section, to read:

403.504 Department of Environmental Protection; powers and duties enumerated.--The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location, construction, and operation of electrical power plants.

(7) To conduct studies and prepare a project ~~written~~ analysis under s. 403.507.

(9) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.508(6).

(10) To act as clerk for the siting board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(12) To issue emergency orders on behalf of the board for facilities licensed under this act.

~~(9) To notify all affected agencies of the filing of a notice of intent within 15 days after receipt of the notice.~~

~~(10) To issue, with the electrical power plant certification, any license required pursuant to any federally delegated or approved permit program.~~

Section 20. Section 403.5055, Florida Statutes, is amended to read:

403.5055 Application for permits pursuant to s. 403.0885.--In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

~~(2) The department's proposed action pursuant to 40 C.F.R. s. 124.6, including any draft NPDES permit (containing the information required under 40 C.F.R. s. 124.6(d)), shall within 130 days after the submittal of a complete application be publicly noticed and transmitted to the United States Environmental Protection Agency for its review pursuant to 33 U.S.C. s. 1342(d).~~

(2) ~~(3)~~ If available at the time the department issues its project analysis pursuant to s. 403.507(5), the department shall include in its project analysis ~~written analysis pursuant to s. 403.507(3)~~ copies of the department's proposed action pursuant to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any corresponding comments received from the United States Environmental Protection Agency, the applicant, or the general public; and the department's response to those comments.

(3) ~~(4)~~ The department shall not issue or deny the permit pursuant to s. 403.0885 in advance of the issuance of the electrical ~~electric~~ power plant certification under this part unless required to do so by the provisions of federal law. When possible, any hearing on a permit issued pursuant to s. 403.0885 shall be conducted in conjunction with the certification hearing

held pursuant to this act. The department's actions on an NPDES permit shall be based on the record and recommended order of the certification hearing, if the hearing on the NPDES was conducted in conjunction with the certification hearing, and of any other proceeding held in connection with the application for an NPDES permit, timely public comments received with respect to the application, and the provisions of federal law. The department's action on an NPDES permit, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved state NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program. ~~The permit, if issued, shall be valid for no more than 5 years.~~

~~(5) The department's action on an NPDES permit renewal, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations.~~

Section 21. Section 403.506, Florida Statutes, is amended to read:

403.506 Applicability, thresholds, and certification.--

(1) The provisions of this act shall apply to any electrical power plant as defined herein, except that the provisions of this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity or to any substation to be constructed as part of an associated transmission line unless the applicant has elected to apply for certification of such plant or substation under this act. The provisions of this act shall not apply to any unit capacity expansion of 35 megawatts or less of an existing exothermic reaction cogeneration unit that was exempt from this act when it was originally built; however, this exemption shall not apply if the unit uses oil or natural gas for purposes other than unit startup. No construction of any new electrical power plant or expansion in steam generating capacity as measured by an increase in the maximum electrical generator rating of any existing electrical power plant may be undertaken after October 1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, including increases in steam turbine efficiency, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum

electrical generator rating ~~operating capacity~~ of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

~~(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60. However, permits issued pursuant to s. 403.0885 shall be processed in accordance with 40 C.F.R. part 123.~~

Section 22. Section 403.5064, Florida Statutes, is amended to read:

403.5064 Application ~~Distribution of application~~; schedules.--

(1) The formal date of filing of a certification application and commencement of the certification review process shall be when the applicant submits:

(a) Copies of the certification application in a quantity and format as prescribed by rule to the department and other agencies identified in s. 403.507(2)(a).

(b) The application fee specified under s. 403.518 to the department.

(2) ~~(1)~~ Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional ~~those affected or other~~ agencies or persons entitled to notice and copies of the application and any amendments. Copies of the application shall be distributed within 5 days

after the provision of such names and addresses by the applicant to these additional agencies. This distribution shall not be a basis for altering the schedule of dates for the certification process.

(3) Any amendment to the application made prior to certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered good cause for alteration of time limits pursuant to s. 403.5095.

(4) ~~(2)~~ Within 7 days after the filing of an application ~~completeness has been determined~~, the department shall prepare a proposed schedule of dates for determination of completeness, submission of statements of issues, ~~determination of sufficiency, and~~ submittal of final reports, ~~from affected and other agencies~~ and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.508(3) ~~(4)~~. This schedule shall be timely provided by the department to the applicant, the administrative law judge, all agencies identified pursuant to subsection (2) ~~(1)~~, and all parties. Within 7 days after the filing of the proposed schedule, the administrative law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(5) ~~(3) Within 7 days after completeness has been determined, the applicant shall distribute copies of the application to all agencies identified by the department pursuant to subsection (1).~~ Copies of changes and amendments to

the application shall be timely distributed by the applicant to all ~~affected~~ agencies and parties who have received a copy of the application.

(6) Notice of the filing of the application shall be published in accordance with the requirements of s. 403.5115.

Section 23. Section 403.5065, Florida Statutes, is amended to read:

403.5065 Appointment of administrative law judge; powers and duties.--

(1) Within 7 days after receipt of an application, ~~whether complete or not,~~ the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act. The division director shall designate an administrative law judge within 7 days after receipt of the request from the department. In designating an administrative law judge for this purpose, the division director shall, whenever practicable, assign an administrative law judge who has had prior experience or training in electrical power plant site certification proceedings. Upon being advised that an administrative law judge has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated administrative law judge, who shall docket the application.

(2) The administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and by the laws and rules of the department.

Section 24. Section 403.5066, Florida Statutes, is amended to read:

403.5066 Determination of completeness.--

(1)(a) Within 30 days after the filing of an application, affected agencies shall file a statement with the department containing each agency's recommendations on the completeness of the application.

(b) Within 40 ~~15~~ days after the filing ~~receipt~~ of an application, the department shall file a statement with the Division of Administrative Hearings, ~~and~~ with the applicant, and with all parties declaring its position with regard to the completeness~~, not the sufficiency,~~ of the application. The department's statement shall be based upon consultation with the affected agencies.

(2)~~(1)~~ If the department declares the application to be incomplete, the applicant, within 15 days after the filing of the statement by the department, shall file with the Division of Administrative Hearings, ~~and~~ with the department, and all parties ~~a statement~~:

(a) A withdrawal of ~~Agreeing with the statement of the department and withdrawing~~ the application;

(b) A statement agreeing to supply the additional information necessary to make the application complete. Such additional information shall be provided within 30 days after the issuance of the department's statement on completeness of the application. The time schedules under this act shall not be tolled if the applicant makes the application complete within 30 days after the issuance of the department's statement on

completeness of the application. A subsequent finding by the department that the application remains incomplete, based upon the additional information submitted by the applicant or upon the failure of the applicant to timely submit the additional information, tolls the time schedules under this act until the application is determined complete; ~~Agreeing with the statement of the department and agreeing to amend the application without withdrawing it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete; or~~

(c) A statement contesting the department's determination of incompleteness; or ~~contesting the statement of the department.~~

(d) A statement agreeing with the department and requesting additional time beyond 30 days to provide the information necessary to make the application complete. If the applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) ~~(2)~~ If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 21 ~~30~~ days after the filing of the statement by the department. The administrative law judge shall render a decision within 7 ~~10~~ days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute.

(c) ~~(a)~~ If the administrative law judge determines that the application was not complete ~~as filed~~, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(d) ~~(b)~~ If the administrative law judge determines that the application was complete at the time it was declared incomplete ~~filed~~, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 15 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 22 days after receipt of the additional information from the applicant submitted under paragraph (2)(b), paragraph (2)(d), or paragraph (3)(c), the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

Section 25. Section 403.50663, Florida Statutes, is created to read:

403.50663 Informational public meetings.--

(1) A local government within whose jurisdiction the power plant is proposed to be sited may hold one informational public meeting in addition to the hearings specifically authorized by this act on any matter associated with the electrical power plant proceeding. Such informational public meetings shall be held by the local government or by the regional planning council if the local government does not hold such meeting within 70 days after the filing of the application. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electrical power plant or associated facilities, obtain comments from the public, and formulate its recommendation with respect to the proposed electrical power plant.

(2) Informational public meetings shall be held solely at the option of each local government or regional planning council if a public meeting is not held by the local government. It is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting.

(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting are not grounds for the alteration of any time limitation in this act under s. 403.5095 or grounds to deny or condition certification.

Section 26. Section 403.50665, Florida Statutes, is created to read:

403.50665 Land use consistency.--

(1) The applicant shall include in the application a statement on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of such consistency.

(2) Within 80 days after the filing of the application, each local government shall file a determination with the department, the applicant, the administrative law judge, and all parties on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed, based on the information provided in the application. The applicant shall publish notice of the consistency determination in accordance with the requirements of s. 403.5115.

(3) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the department within 15 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

(4) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(5) If it is determined by the local government that the proposed site or directly associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 27. Section 403.5067, Florida Statutes, is repealed.

Section 28. Section 403.507, Florida Statutes, is amended to read:

403.507 Preliminary statements of issues, reports, project analyses, and studies.--

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department, ~~and~~ the applicant, and all parties no later than 40 ~~60~~ days after the certification application has been determined ~~distribution of the~~ complete ~~application~~. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2)(a) No later than 100 days after the certification application has been determined complete, the following agencies shall prepare reports as provided below and shall submit them to

the department and the applicant ~~within 150 days after distribution of the complete application~~:

1. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management requirements, and other such matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

~~2. The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.~~

2.~~3.~~ The water management district shall prepare a report as to matters within its jurisdiction, including but not limited to, the impact of the proposed electrical power plant on water resources, regional water supply planning, and district-owned lands and works.

3.~~4.~~ Each local government in whose jurisdiction the proposed electrical power plant is to be located shall prepare a report as to the consistency of the proposed electrical power plant with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed electrical

power plant, including ~~adopted local comprehensive plans, land development regulations, and~~ any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means.

4.~~5.~~ The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

5.~~6.~~ Each ~~The~~ regional planning council shall prepare a report containing recommendations that address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186 and other matters within its jurisdiction.

6. The Department of Transportation shall address the impact of the proposed electrical power plant on matters within its jurisdiction.

(b)~~7.~~ Any other agency, if requested by the department, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may potentially be affected by the proposed electrical power plant.

~~(b) As needed to verify or supplement the studies made by the applicant in support of the application, it shall be the duty of the department to conduct, or contract for, studies of the proposed electrical power plant and site, including, but not limited to, the following, which shall be completed no later than 210 days after the complete application is filed with the department:~~

~~1. Cooling system requirements.~~

~~2. Construction and operational safeguards.~~

~~3. Proximity to transportation systems.~~

~~4. Soil and foundation conditions.~~

~~5. Impact on suitable present and projected water supplies for this and other competing uses.~~

~~6. Impact on surrounding land uses.~~

~~7. Accessibility to transmission corridors.~~

~~8. Environmental impacts.~~

~~9. Requirements applicable under any federally delegated or approved permit program.~~

(3) ~~(c)~~ Each report described in subsection (2) ~~paragraphs (a) and (b)~~ shall contain:

(a) A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception ~~all information on variances, exemptions, exceptions~~, or other relief is necessary in order for the proposed electrical power plant to be certified. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of that agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program. ~~which may be required by s. 403.511(2) and~~

(b) A recommendation for approval or denial of the application.

(c) Any proposed conditions of certification on matters within the jurisdiction of such agency. For each condition proposed by an agency in its report, the agency shall list the

specific statute, rule, or ordinance which authorizes the proposed condition.

(d) The agencies shall initiate the activities required by this section no later than 30 days after the complete application is distributed. The agencies shall keep the applicant and the department informed as to the progress of the studies and any issues raised thereby.

~~(3) No later than 60 days after the application for a federally required new source review or prevention of significant deterioration permit for the electrical power plant is complete and sufficient, the department shall issue its preliminary determination on such permit. Notice of such determination shall be published as required by the department's rules for notices of such permits. The department shall receive public comments and comments from the United States Environmental Protection Agency and other affected agencies on the preliminary determination as provided for in the federally approved state implementation plan. The department shall maintain a record of all comments received and considered in taking action on such permits. If a petition for an administrative hearing on the department's preliminary determination is filed by a substantially affected person, that hearing shall be consolidated with the certification hearing.~~

(4)(a) No later than 150 days after the application is filed, the Public Service Commission shall prepare a report as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant

to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

(b) Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to issuance of the department's project analysis and conduct of the certification hearing.

(5) ~~(4)~~ The department shall prepare a project ~~written~~ analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 ~~240~~ days after the ~~complete~~ application is determined complete ~~filed with the department, but no later than 60 days prior to the hearing~~, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance and consistent with matters within the department's standard jurisdiction, including ~~with~~ the rules of the department, as well as whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the nonprocedural requirements of the affected agencies.

(b) Copies of the studies and reports required by this section ~~and s. 403.519~~.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(e) If available, the recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

~~(f) Copies of the department's draft of the operation permit for a major source of air pollution, which must also be provided to the United States Environmental Protection Agency for review within 5 days after issuance of the written analysis.~~

(6) ~~(5)~~ Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report are ~~shall be~~ grounds to deny or condition certification.

Section 29. Section 403.508, Florida Statutes, is amended to read:

403.508 Land use and certification hearings ~~proceedings~~, parties, participants.--

(1)(a) If a petition for a hearing on land use has been filed pursuant to s. 403.50665, the designated administrative law judge shall conduct a land use hearing in the county of the proposed site or directly associated facility, as applicable, as expeditiously as possible, but not later than 30 ~~within 90~~ days after the department's receipt of the petition ~~a complete application for electrical power plant site certification by the department~~. The place of such hearing shall be as close as possible to the proposed site or directly associated facility.

If a petition is filed, the hearing shall be held regardless of the status of the completeness of the application. However, incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances under s. 403.50665.

(b) Notice of the land use hearing shall be published in accordance with the requirements of s. 403.5115.

(c) ~~(2)~~ The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. If the administrative law judge concludes that the proposed site is not consistent or in compliance with existing land use plans and zoning ordinances, the administrative law judge shall receive at the hearing evidence on, and address in the recommended order any changes to or approvals or variances under, the applicable land use plans or zoning ordinances which will render the proposed site consistent and in compliance with the local land use plans and zoning ordinances.

(d) The designated administrative law judge's recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 60 ~~45~~ days after receipt of the recommended order by the board.

(e) If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, or as otherwise provided by this act, the responsible zoning or

planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of ~~affect~~ the proposed electrical power plant on the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

(f) If it is determined by the board that the proposed site does not conform with existing land use plans and zoning ordinances, ~~it shall be the responsibility of the applicant to make the necessary application for rezoning. Should the application for rezoning be denied, the applicant may appeal this decision to~~ the board~~, which~~ may, if it determines after notice and hearing and upon consideration of the recommended order on land use and zoning issues that it is in the public interest to authorize the use of the land as a site for an electrical power plant, authorize an amendment, rezoning, variance, or other approval ~~a variance~~ to the adopted land use plan and zoning ordinances required to render the proposed site consistent with local land use plans and zoning ordinances. The board's action shall not be controlled by any other procedural requirements of law. In the event a variance or other approval is denied by the board, it shall be the responsibility of the applicant to make the necessary application for any approvals determined by the board as required to make the proposed site consistent and in compliance with local land use plans and zoning ordinances. No further action may be taken on the complete application ~~by the department~~ until the proposed site conforms to the adopted land use plan or zoning ordinances or the board grants relief as provided under this act.

(2)(a) ~~(3)~~ A certification hearing shall be held by the designated administrative law judge no later than 265 ~~300~~ days after the ~~complete~~ application is filed with the department~~,~~ ~~however, an affirmative determination of need by the Public Service Commission pursuant to s. 403.519 shall be a condition precedent to the conduct of the certification hearing~~. The certification hearing shall be held at a location in proximity to the proposed site. ~~The certification hearing shall also constitute the sole hearing allowed by chapter 120 to determine the substantial interest of a party regarding any required agency license or any related permit required pursuant to any federally delegated or approved permit program.~~ At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 ~~60~~ days after the filing of the hearing transcript. ~~In the event the administrative law judge fails to issue a recommended order within 60 days after the filing of the hearing transcript, the administrative law judge shall submit a report to the board with a copy to all parties within 60 days after the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended order will be issued.~~

(b) Notice of the certification hearing and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5115.

(3)(a) ~~(4)(a)~~ Parties to the proceeding shall include:

1. The applicant.

2. The Public Service Commission.

3. The Department of Community Affairs.

4. The Fish and Wildlife Conservation Commission.

5. The water management district.

6. The department.

7. The regional planning council.

8. The local government.

9. The Department of Transportation.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120, upon the filing with the administrative law judge of a notice of intent to be a party no later than 75 days after the application is filed ~~at least 15 days prior to the date of the land use hearing~~, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or

orderly development of the area in which the proposed electrical power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency described in subparagraph (c)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated administrative law judge and upon such conditions as he or she may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are being affected pursuant to s. 403.509(4), shall be made a party upon the request of the department or the applicant.

(4)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant.

2. The department.

3. State agencies.

4. Regional agencies, including regional planning councils and water management districts.

5. Local governments.

6. Other parties.

(b) ~~(5)~~ When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge. If the designated administrative law judge proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(5) At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.

(6)(a) No earlier than 29 days prior to the conduct of the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of fact or law to be raised at the certification hearing, and if sufficient time remains for the applicant and the department to publish public notices of the cancellation of the hearing at least 3 days prior to the scheduled date of the hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days after receipt of the request.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing, in accordance with s. 403.5115.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.509(1)(a).

2. Parties may submit proposed recommended orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

~~(6) The designated administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and this chapter and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness and sufficiency of an application for certification.~~

~~(7) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:~~

~~(a) The applicant.~~

~~(b) The department.~~

~~(c) State agencies.~~

~~(d) Regional agencies, including regional planning councils and water management districts.~~

~~(e) Local governments.~~

~~(f) Other parties.~~

(8) In issuing permits under the federally approved new source review or prevention of significant deterioration permit program, the department shall observe the procedures specified under the federally approved state implementation plan, including public notice, public comment, public hearing, and notice of applications and amendments to federal, state, and local agencies, to assure that all such permits issued in coordination with the certification of a power plant under this act are federally enforceable and are issued after opportunity for informed public participation regarding the terms and conditions thereof. When possible, any hearing on a federally approved or delegated program permit such as new source review, prevention of significant deterioration permit, or NPDES permit shall be conducted in conjunction with the certification hearing held under this act. ~~The department shall accept written comment with respect to an application for, or the department's preliminary determination on, a new source review or prevention of significant deterioration permit for a period of no less than 30 days from the date notice of such action is published. Upon request submitted within 30 days after published notice, the department shall hold a public meeting, in the area affected, for the purpose of receiving public comment on issues related to the new source review or prevention of significant deterioration permit. If requested following notice of the department's preliminary determination, the public meeting to receive public comment shall be held prior to the scheduled certification~~

~~hearing. The department shall also solicit comments from the United States Environmental Protection Agency and other affected federal agencies regarding the department's preliminary determination for any federally required new source review or prevention of significant deterioration permit.~~ It is the intent of the Legislature that the review, processing, and issuance of such federally delegated or approved permits be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures ~~contained in the state implementation plan,~~ the applicable federal requirements ~~of the implementation plan~~ shall control.

Section 30. Section 403.509, Florida Statutes, is amended to read:

403.509 Final disposition of application.--

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under the provisions of s. 403.508(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing.

(b) If the administrative law judge has not granted a request to cancel the certification hearing under the provisions of s. 403.508(6), within 60 days after receipt of the designated administrative law judge's recommended order, the board shall act upon the application by written order, approving ~~certification~~ or denying certification ~~the issuance of a~~

~~certificate~~, in accordance with the terms of this act, and stating the reasons for issuance or denial. If certification ~~the certificate~~ is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(3) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of the electrical power plant and directly associated facilities and their construction and operation will:

(a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.

(b) Comply with applicable nonprocedural requirements of agencies.

(c) Be consistent with applicable local government comprehensive plans and land development regulations.

(d) Meet the electrical energy needs of the state in an orderly and timely fashion.

(e) Provide a reasonable balance between the need for the facility as established pursuant to s. 403.519, and the impacts

upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.

(f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

(g) Serve and protect the broad interests of the public.

~~(3) Within 30 days after issuance of the certification, the department shall issue and forward to the United States Environmental Protection Agency a proposed operation permit for a major source of air pollution and must issue or deny any other license required pursuant to any federally delegated or approved permit program. The department's action on the license and its action on the proposed operation permit for a major source of air pollution shall be based upon the record and recommended order of the certification hearing. The department's actions on a federally required new source review or prevention of significant deterioration permit shall be based on the record and recommended order of the certification hearing and of any other proceeding held in connection with the application for a new source review or prevention of significant deterioration permit, on timely public comments received with respect to the application or preliminary determination for such permit, and on the provisions of the state implementation plan.~~

(4) The department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board

regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program. Nothing in this part shall be construed to authorize the issuance of a new source review or prevention of significant deterioration permit which does not conform to the requirements of the federally approved state implementation plan. ~~Any final operation permit for a major source of air pollution must be issued in accordance with the provisions of s. 403.0872. Unless the federally delegated or approved permit program provides otherwise, licenses issued by the department under this subsection shall be effective for the term of the certification issued by the board. If renewal of any license issued by the department pursuant to a federally delegated or approved permit program is required, such renewal shall not affect the certification issued by the board, except as necessary to resolve inconsistencies pursuant to s. 403.516(1)(a).~~

(5) ~~(4)~~ In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and directly associated facilities ~~site~~ and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification. However, the

applicant shall seek any necessary interest in state lands the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund from the Board of Trustees or from the governing board of the water management district created pursuant to chapter 373 before, during, or after the certification proceeding, and certification may be made contingent upon issuance of the appropriate interest. Neither the applicant nor any party to the certification proceeding may directly or indirectly raise or relitigate any matter that was or could have been an issue in the certification proceeding in any proceeding before the Board of Trustees of the Internal Improvement Trust Fund wherein the applicant is seeking necessary interest in state lands, but the information presented in the certification proceeding shall be available for review by the Board of Trustees and its staff.

(6) ~~(5)~~ Except as specified in subsection (4) ~~for the issuance of any operation permit for a major source of air pollution pursuant to s. 403.0872~~, the issuance or denial of the certification by the board or secretary of the department ~~and the issuance or denial of any related department license required pursuant to any federally delegated or approved permit program~~ shall be the final administrative action required as to that application.

~~(6) All certified electrical power plants must apply for and obtain a major source air-operation permit pursuant to s. 403.0872. Major source air-operation permit applications for certified electrical power plants must be submitted pursuant to a schedule developed by the department. To the extent that any~~

~~conflicting provision, limitation, or restriction under any rule, regulation, or ordinance imposed by any political subdivision of the state, or by any local pollution control program, was superseded during the certification process pursuant to s. 403.510(1), such rule, regulation, or ordinance shall continue to be superseded for purposes of the major source air-operation permit program under s. 403.0872.~~

Section 31. Section 403.511, Florida Statutes, is amended to read:

403.511 Effect of certification.--

(1) Subject to the conditions set forth therein, any certification ~~signed by the Governor~~ shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee ~~applicant~~ named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b)1. Except as provided in subsection (4), the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during

the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency as provided below and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order ~~by the siting board~~ that the public interests set forth in s. 403.509(3) ~~403.502~~ in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought. ~~Each party shall notify the applicant and other parties at least 60 days prior to the certification hearing of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any electrical power plant proposed for certification. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of the department or any other agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.~~

(3) The certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, except for permits issued pursuant to any federally delegated or approved permit program ~~s. 403.0885~~ and except as provided in ~~s. 403.509(3) and (6),~~ chapter 404~~,~~ or the Florida Transportation Code~~, or 33 U.S.C. s. 1341~~.

(4) This act shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the department, any holder of a certification issued pursuant to this act may choose

to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

(6) No term or condition of a site certification shall be interpreted to supersede or control the provisions of a final operation permit for a major source of air pollution issued by the department pursuant to s. 403.0872 to a ~~such~~ facility certified under this part.

(7) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 32. Section 403.5112, Florida Statutes, is created to read:

403.5112 Filing of notice of certified corridor route.--

(1) Within 60 days after certification of a directly associated linear facility pursuant to this act, the applicant shall file, in accordance with s. 28.222, with the department and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner.

Section 33. Section 403.5113, Florida Statutes, is created to read:

403.5113 Postcertification amendments.--

(1) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed change to the application requires a modification of the conditions of certification.

(2) If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

(3) If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

Section 34. Section 403.5115, Florida Statutes, is amended to read:

403.5115 Public notice; costs of proceeding.--

(1) The following notices are to be published by the applicant:

(a) Notice ~~A notice~~ of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice ~~A notice~~ of filing of the application, which shall include a description of the proceedings required by this act, within 21 days after the date of the application filing ~~be published as specified in subsection (2), within 15 days after the application has been determined complete~~. Such notice shall give notice of the provisions of s. 403.511(1) and (2) ~~and that the application constitutes a request for a federally required new source review or prevention of significant deterioration permit~~.

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 15 days after the determination is filed.

(d) Notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 ~~45~~ days before the hearing.

(e) ~~(d)~~ Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification ~~no later than 45 days before the~~ hearing.

(f) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days before the date of the originally scheduled certification hearing.

(g) ~~(e)~~ Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification.~~, except that~~ The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no later than 30 days before the hearing ~~provided as specified in paragraph (d)~~.

(h) ~~(f)~~ Notice of a supplemental application, which shall be published as specified in paragraph (b) and subsection (2).~~follows:~~

~~1. Notice of receipt of the supplemental application shall be published as specified in paragraph (b).~~

~~2. Notice of the certification hearing shall be published as specified in paragraph (d).~~

(i) Notice of existing site certification pursuant to s. 403.5175. Notices shall be published as specified in paragraph (b) and subsection (2).

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper ~~and published in a section of the newspaper other than the legal notices section~~. These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have

requested to be placed on the departmental mailing list for this purpose:

(a) Notice ~~Publish in the Florida Administrative Weekly notices~~ of the filing of the notice of intent within 15 days after receipt of the notice.~~;~~

(b) Notice of the filing of the application, no later than 21 days after the application filing.~~;~~

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 15 days after the determination is filed.

(d) Notice of the land use hearing before the administrative law judge, if applicable, no later than 15 days before the hearing.~~;~~

(e) Notice of the land use hearing before the board, if applicable.

(f) Notice of the certification hearing at least 45 days before the date set for the certification hearing.~~;~~

(g) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days prior to the date of the originally scheduled certification hearing.

(h) Notice of the hearing before the board, if applicable.~~;~~

(i) Notice and of stipulations, proposed agency action, or petitions for modification.~~; and~~

~~(b) Provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose.~~

~~(5) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.~~

Section 35. Section 403.513, Florida Statutes, is amended to read:

403.513 Review.--Proceedings under this act shall be subject to judicial review as provided in chapter 120. When possible, separate appeals of the certification order issued by the board and of any department permit issued pursuant to a federally delegated or approved permit program may ~~shall~~ be consolidated for purposes of judicial review.

Section 36. Section 403.516, Florida Statutes, is amended to read:

403.516 Modification of certification.--

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b)1. The department may modify specific conditions of a site certification which are inconsistent with the terms of any federally delegated or approved ~~final air pollution operation~~ permit for the certified electrical power plant ~~issued by the United States Environmental Protection Agency under the terms of 42 U.S.C. s. 7661d~~.

2. Such modification may be made without further notice if the matter has been previously noticed under the requirements for any federally delegated or approved permit program.

(c) The licensee may file a petition for modification with the department, or the department may initiate the modification upon its own initiative.

1. A petition for modification must set forth:

a. The proposed modification.

b. The factual reasons asserted for the modification.

c. The anticipated environmental effects of the proposed modification.

2. ~~(b)~~ The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

3. If objections are raised or the department denies the request, the applicant or department may file a request ~~petition~~ for a hearing on the modification with the department. Such request shall be handled pursuant to chapter 120 ~~paragraph (c)~~.

~~(c) A petition for modification may be filed by the applicant or the department setting forth:~~

~~1. The proposed modification,~~

~~2. The factual reasons asserted for the modification, and~~

~~3. The anticipated effects of the proposed modification on the applicant, the public, and the environment.~~

~~The petition for modification shall be filed with the department and the Division of Administrative Hearings.~~

4. Requests referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(d) As required by s. 403.511(5).

~~(2) Petitions filed pursuant to paragraph (1)(c) shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.~~

(2)~~(3)~~ Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 37. Section 403.517, Florida Statutes, is amended to read:

403.517 Supplemental applications for sites certified for ultimate site capacity.--

(1)(a) Supplemental ~~The department shall adopt rules governing the processing of supplemental~~ applications may be submitted for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. Such applications shall include all new directly

associated facilities that support the construction and operation of the electrical power plant. ~~The rules adopted pursuant to this section shall include provisions for:~~

~~1. Prompt appointment of a designated administrative law judge.~~

~~2. The contents of the supplemental application.~~

~~3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.~~

~~4. Public notice of the filing of the supplemental applications.~~

~~5. Time limits for prompt processing of supplemental applications.~~

~~6. Final disposition by the board within 215 days of the filing of a complete supplemental application.~~

(b) The review shall use the same procedural steps and notices as for an initial application.

(c) The time limits for the processing of a complete supplemental application shall be designated by the department commensurate with the scope of the supplemental application, but shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(d) ~~(c)~~ Any time limitation in this section or in rules adopted pursuant to this section may be altered pursuant to s. 403.5095 ~~by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 and this act in considering and processing such supplemental applications~~.

(2) ~~Supplemental applications shall be reviewed as provided in ss. 403.507-403.511, except that the time limits provided in this section shall apply to such supplemental applications.~~

~~(3)~~ The land use and zoning consistency determination of s. 403.50665 ~~hearing requirements of s. 403.508(1) and (2)~~ shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

~~(4) For the purposes of this act, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.~~

Section 38. Section 403.5175, Florida Statutes, is amended to read:

403.5175 Existing electrical power plant site certification.--

(1) An electric utility that owns or operates an existing electrical power plant as defined in s. 403.503(12) may apply for certification of an existing power plant and its site in order to obtain all agency licenses necessary to ensure ~~assure~~ compliance with federal or state environmental laws and regulation using the centrally coordinated, one-stop licensing process established by this part. An application for site certification under this section must be in the form prescribed by department rule. Applications must be reviewed and processed using the same procedural steps and notices as for an application for a new facility ~~in accordance with ss. 403.5064-403.5115~~, except that a determination of need by the Public Service Commission is not required.

(2) An application for certification under this section must include:

(a) A description of the site and existing power plant installations;

(b) A description of all proposed changes or alterations to the site or electrical power plant, including all new associated facilities that are the subject of the application;

(c) A description of the environmental and other impacts caused by the existing utilization of the site and directly associated facilities, and the operation of the electrical power plant that is the subject of the application, and of the environmental and other benefits, if any, to be realized as a result of the proposed changes or alterations if certification

is approved and such other information as is necessary for the reviewing agencies to evaluate the proposed changes and the expected impacts;

(d) The justification for the proposed changes or alterations;

(e) Copies of all existing permits, licenses, and compliance plans authorizing utilization of the site and directly associated facilities or operation of the electrical power plant that is the subject of the application.

(3) The land use and zoning determination ~~hearing~~ requirements of s. 403.50665 ~~s. 403.508(1) and (2)~~ do not apply to an application under this section if the applicant does not propose to expand the boundaries of the existing site. If the applicant proposes to expand the boundaries of the existing site to accommodate portions of the plant or associated facilities, a land use and zoning determination shall be made ~~hearing must be held~~ as specified in s. 403.50665 ~~s. 403.508(1) and (2)~~; provided, however, that the sole issue for determination ~~through the land use hearing~~ is whether the proposed site expansion is consistent and in compliance with the existing land use plans and zoning ordinances.

(4) In considering whether an application submitted under this section should be approved in whole, approved with appropriate conditions, or denied, the board shall consider whether, and to the extent to which the proposed changes to the electrical power plant and its continued operation under certification will:

(a) Comply with the provisions of s. 403.509(3). ~~applicable nonprocedural requirements of agencies;~~

(b) Result in environmental or other benefits compared to current utilization of the site and operations of the electrical power plant if the proposed changes or alterations are undertaken.~~;~~

~~(c) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life; and~~

~~(d) Serve and protect the broad interests of the public.~~

(5) An applicant's failure to receive approval for certification of an existing site or an electrical power plant under this section is without prejudice to continued operation of the electrical power plant or site under existing agency licenses.

Section 39. Section 403.518, Florida Statutes, is amended to read:

403.518 Fees; disposition.--

~~(1)~~ The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1)~~(a)~~ A fee for a notice of intent pursuant to s. 403.5063, in the amount of $2,500, to be submitted to the department at the time of filing of a notice of intent. The notice-of-intent fee shall be used and disbursed in the same manner as the application fee.

(2) ~~(b)~~ An application fee, which shall not exceed $200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in electrical generating capacity proposed by the application~~, or the number and size of local governments in whose jurisdiction the electrical power plant is located~~.

(a) ~~1.~~ Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review ~~reviewing~~ and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

(b) ~~2.~~ The following percentages ~~Twenty percent of the fee or $25,000, whichever is greater,~~ shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services: ~~.~~

1. Five percent to compensate expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 5 percent if a land use hearing is held pursuant to s. 403.508.

3. An additional 10 percent if a certification hearing is held pursuant to s. 403.508.

(c) 1. ~~3.~~ Upon written request with proper itemized accounting within 90 days after final agency action by the board or withdrawal of the application, the agencies that prepared reports pursuant to s. 403.507 or participated in a hearing pursuant to s. 403.508 may submit a written request to the department for reimbursement of expenses incurred during the

certification proceedings. The request shall contain an accounting of expenses incurred which may include time spent reviewing the application, ~~the department shall reimburse the Department of Community Affairs, the Fish and Wildlife Conservation Commission, and any water management district created pursuant to chapter 373, regional planning council, and local government in the jurisdiction of which the proposed electrical power plant is to be located, and any other agency from which the department requests special studies pursuant to s. 403.507(2)(a)7. Such reimbursement shall be authorized for~~ the preparation of any studies required of the agencies by this act, ~~and for~~ agency travel and per diem to attend any hearing held pursuant to this act, and for any agency or local government's provision of notice of public meetings or hearings required as a result of the application for certification ~~governments to participate in the proceedings~~. The department shall review the request and verify that the expenses are valid. Valid expenses shall be reimbursed; however, in the event the amount of funds available for reimbursement ~~allocation~~ is insufficient to provide for full compensation ~~complete reimbursement~~ to the agencies requesting reimbursement, reimbursement shall be on a prorated basis.

2. If the application review is held in abeyance for more than 1 year, the agencies may submit a request for reimbursement.

(d)~~4.~~ If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this act; provided, however, that if the

certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after withdrawal.

(3)(a) ~~(c)~~ A certification modification fee, which shall not exceed $30,000. The department shall establish rules for determining such a fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

(b) The fee shall be submitted to the department with a ~~formal~~ petition for modification ~~to the department~~ pursuant to s. 403.516. This fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (2) ~~paragraph (b)~~, except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only $10,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. ~~The fee for a modification by agreement filed pursuant to s. 403.516(1)(b) shall be $10,000 to be paid upon the filing of the request for modification. Any sums remaining after payment of authorized costs shall be refunded to the applicant within 90 days of issuance or denial of the modification or withdrawal of the request for modification.~~

(4) ~~(d)~~ A supplemental application fee, not to exceed $75,000, to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and

processed in the same manner as the certification application fee in subsection (2) ~~paragraph (b), except that only $20,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services~~.

(5) ~~(e)~~ An existing site certification application fee, not to exceed $200,000, to cover all reasonable costs and expenses of the review processing and proceedings for certification of an existing power plant site under s. 403.5175. This fee must be established, disbursed, and processed in the same manner as the certification application fee in subsection (2) ~~paragraph (b)~~.

~~(2) Effective upon the date commercial operation begins, the operator of an electrical power plant certified under this part is required to pay to the department an annual operation license fee as specified in s. 403.0872(11) to be deposited in the Air Pollution Control Trust Fund.~~

Section 40. Any application for electrical power plant certification filed pursuant to ss. 403.501-403.518, Florida Statutes, shall be processed under the provisions of the law applicable at the time the application was filed, except that the provisions relating to cancellation of the certification hearing under s. 403.508(6), Florida Statutes, the provisions relating to the final disposition of the application and issuance of the written order by the secretary under s. 403.509(1)(a), Florida Statutes, and notice of the cancellation of the certification hearing under s. 403.5115, Florida Statutes, may apply to any application for electrical power plant certification.

Section 41. Section 403.519, Florida Statutes, is amended to read:

403.519 Exclusive forum for determination of need.--

(1) On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(2) The applicant ~~commission~~ shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 ~~45~~ days prior to the scheduled date for the proceeding. The commission shall publish notice of the proceeding in the manner specified by chapter 120 at least 21 days prior to the scheduled date for the proceeding.

(3) The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's

determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4) ~~403.507(2)(a)2~~. An order entered pursuant to this section constitutes final agency action.

Section 42. Section 403.885, Florida Statutes, is amended to read:

403.885 Water Projects ~~Stormwater management; wastewater management; and Water Restoration~~ Grant Program.--

(1) The Department of Environmental Protection shall administer a grant program to use funds transferred pursuant to s. 212.20 to the Ecosystem Management and Restoration Trust Fund or other moneys as appropriated by the Legislature for water quality improvement, stormwater management, wastewater management, and water restoration project grants. Eligible recipients of such grants include counties, municipalities, water management districts, and special districts that have legal responsibilities for water quality improvement, water management, stormwater management, wastewater management, lake and river water restoration projects, and~~.~~ drinking water projects ~~are not eligible for funding~~ pursuant to this section.

(2) The grant program shall provide for the evaluation of annual grant proposals. The department shall evaluate such proposals to determine if they:

(a) Protect public health or ~~and~~ the environment.

(b) Implement plans developed pursuant to the Surface Water Improvement and Management Act created in part IV of chapter 373, other water restoration plans required by law,

management plans prepared pursuant to s. 403.067, or other plans adopted by local government for water quality improvement and water restoration.

~~(3) In addition to meeting the criteria in subsection (2), annual grant proposals must also meet the following requirements:~~

~~(a) An application for a stormwater management project may be funded only if the application is approved by the water management district with jurisdiction in the project area. District approval must be based on a determination that the project provides a benefit to a priority water body.~~

~~(b) Except as provided in paragraph (c), an application for a wastewater management project may be funded only if:~~

~~1. The project has been funded previously through a line item in the General Appropriations Act; and~~

~~2. The project is under construction.~~

~~(c) An application for a wastewater management project that would qualify as a water pollution control project and activity in s. 403.1838 may be funded only if the project sponsor has submitted an application to the department for funding pursuant to that section.~~

~~(4) All project applicants must provide local matching funds as follows:~~

~~(a) An applicant for state funding of a stormwater management project shall provide local matching funds equal to at least 50 percent of the total cost of the project; and~~

~~(b) An applicant for state funding of a wastewater management project shall provide matching funds equal to at least 25 percent of the total cost of the project.~~

~~The requirement for matching funds may be waived if the applicant is a financially disadvantaged small local government as defined in subsection (5).~~

~~(5) Each fiscal year, at least 20 percent of the funds available pursuant to this section shall be used for projects to assist financially disadvantaged small local governments. For purposes of this section, the term "financially disadvantaged small local government" means a municipality having a population of 7,500 or less, a county having a population of 35,000 or less, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce, or a county in an area designated by the Governor as a rural area of critical economic concern pursuant to s. 288.0656. Grants made to these eligible local governments shall not require matching local funds.~~

~~(6) Each year, stormwater management and wastewater management projects submitted for funding through the legislative process shall be submitted to the department by the appropriate fiscal committees of the House of Representatives and the Senate. The department shall review the projects and must provide each fiscal committee with a list of projects that appear to meet the eligibility requirements under this grant program.~~

Section 43. For the 2006-2007 fiscal year, the sum of $61,379 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the energy-efficient products sales tax holiday.

Section 44. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

1

Amendment No. (for drafter's use only)

Bill No. **1473**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative Hasner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Legislative findings and intent.--The Legislature finds that advancing the development of renewable energy technologies and energy efficiency is important for the state's future, its energy stability, and the protection of its citizens' public health and its environment. The Legislature finds that the development of renewable energy technologies and energy efficiency in the state will help to reduce demand for foreign fuels, promote energy diversity, enhance system reliability, reduce pollution, educate the public on the promise of renewable energy technologies, and promote economic growth. The Legislature finds that there is a need to assist in the development of market demand that will advance the commercialization and widespread application of renewable energy technologies. The Legislature further finds that the state is ideally positioned to stimulate economic development through such renewable energy technologies due to its ongoing and

successful research and development track record in these areas, an abundance of natural and renewable energy sources, an ability to attract significant federal research and development funds, and the need to find and secure renewable energy technologies for the benefit of its citizens, visitors, and environment.

Section 2. Section 377.801, Florida Statutes, is created to read:

377.801 Short title.--Sections 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3. Section 377.802, Florida Statutes, is created to read:

377.802 Purpose.--This act is intended to provide matching grants to stimulate capital investment in the state and to enhance the market for and promote the statewide utilization of renewable energy technologies. The targeted grants program is designed to advance the already growing establishment of renewable energy technologies in the state and encourage the use of other incentives such as tax exemptions and regulatory certainty to attract additional renewable energy technology producers, developers, and users to the state. This act is also intended to provide incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings.

Section 4. Section 377.803, Florida Statutes, is created to read:

377.803 Definitions.--As used in ss. 377.801-377.806, the term:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.

(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.

(3) "Commission" means the Florida Public Service Commission.

(4) "Department" means the Department of Environmental Protection.

(5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.

(6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.

(8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that would normally require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.

(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.

(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5. Section 377.804, Florida Statutes, is created to read:

377.804 Renewable Energy Technologies Grants Program.--

(1) The Renewable Energy Technologies Grants Program is established within the department to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies.

(2) Matching grants for renewable energy technology demonstration, commercialization, research, and development projects may be made to any of the following:

(a) Municipalities and county governments.

(b) Established for-profit companies licensed to do business in the state.

(c) Universities and colleges in the state.

(d) Utilities located and operating within the state.

(e) Not-for-profit organizations.

(f) Other qualified persons, as determined by the department.

(3) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to provide for application requirements, provide for ranking of applications, and administer the awarding of grants under this program.

(4) Factors the department shall consider in awarding grants include, but are not limited to:

(a) The availability of matching funds or other in-kind contributions applied to the total project from an applicant. The department shall give greater preference to projects that provide such matching funds or other in-kind contributions.

(b) The degree to which the project stimulates in-state capital investment and economic development in metropolitan and

rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies.

(c) The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory that supports the proposal.

(d) The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

(e) The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential.

(f) The degree to which a project demonstrates efficient use of energy and material resources.

(g) The degree to which the project fosters overall understanding and appreciation of renewable energy technologies.

(h) The ability to administer a complete project.

(i) Project duration and timeline for expenditures.

(j) The geographic area in which the project is to be conducted in relation to other projects.

(k) The degree of public visibility and interaction.

(5) The department shall solicit the expertise of other state agencies in evaluating project proposals. State agencies shall cooperate with the Department of Environmental Protection and provide such assistance as requested.

(6) The department shall coordinate and actively consult with the Department of Agriculture and Consumer Services during the review and approval process of grants relating to bioenergy projects for renewable energy technology, and the departments shall jointly determine the grant awards to these bioenergy

projects. No grant funding shall be awarded to any bioenergy project without such joint approval. Factors for consideration in awarding grants may include, but are not limited to, the degree to which:

(a) The project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for bioenergy.

(b) The project produces bioenergy from Florida-grown crops or biomass.

(c) The project demonstrates efficient use of energy and material resources.

(d) The project fosters overall understanding and appreciation of bioenergy technologies.

(e) Matching funds and in-kind contributions from an applicant are available.

(f) The project duration and the timeline for expenditures are acceptable.

(g) The project has a reasonable assurance of enhancing the value of agricultural products or will expand agribusiness in the state.

(h) Preliminary market and feasibility research has been conducted by the applicant or others and shows there is a reasonable assurance of a potential market.

Section 6. Section 377.805, Florida Statutes, is created to read:

377.805 Energy-efficient products sales tax holiday.--The period from 12:01 a.m., October 5, through midnight, October 11, 2006, shall be designated "Energy Efficient Week," and the tax levied under chapter 212 may not be collected on the sale of a new energy-efficient product having a selling price of $1,500 or

less per product during that period. This exemption applies only when the energy-efficient product is purchased for noncommercial home or personal use and does not apply when the product is purchased for trade, business, or resale. As used in this section, the term "energy-efficient product" means a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States Department of Energy as meeting or exceeding the requirements under the Energy Star Program of either agency. Purchases made under this section may not be made using a business or company credit or debit card or check. Any construction company, building contractor, or commercial business or entity that purchases or attempts to purchase the energy-efficient products as exempt under this section commits an unfair method of competition in violation of s. 501.204, punishable as provided in s. 501.2075.

Section 7. Section 377.806, Florida Statutes, is created to read:

377.806 Solar Energy System Incentives Program.--

(1) PURPOSE.--The Solar Energy System Incentives Program is established within the department to provide financial incentives for the purchase and installation of solar energy systems. Any resident of the state who purchases and installs a new solar energy system of 2 kilowatts or larger for a solar photovoltaic system, a solar energy system that provides at least 50 percent of a building's hot water consumption for a solar thermal system, or a solar thermal pool heater, from July 1, 2006, through June 30, 2010, is eligible for a rebate on a portion of the purchase price of that solar energy system.

(2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar photovoltaic system qualifies for a rebate if:

1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.

2. The system complies with state interconnection standards as provided by the commission.

3. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--The rebate amount shall be set at $4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:

1. Twenty thousand dollars for a residence.

2. One hundred thousand dollars for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.

(3) SOLAR THERMAL SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar thermal system qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--Authorized rebates for installation of solar thermal systems shall be as follows:

1. Five hundred dollars for a residence.

2. Fifteen dollars per 1,000 Btu up to a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit

organization, including condominiums or apartment buildings. Btu must be verified by approved metering equipment.

(4) SOLAR THERMAL POOL HEATER INCENTIVE.--

(a) Eligibility requirements.--A solar thermal pool heater qualifies for a rebate if the system is installed by a state-licensed solar or plumbing contractor and the system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amount.--Authorized rebates for installation of solar thermal pool heaters shall be $100 per installation.

(5) APPLICATION.--Application for a rebate must be made within 90 days after the purchase of the solar energy equipment.

(6) REBATE AVAILABILITY.--The department shall determine and publish on a regular basis the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year. Requests for rebates received in a fiscal year that are processed during the following fiscal year shall be given priority over requests for rebates received during the following fiscal year.

(7) RULES.--The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to develop rebate applications and administer the issuance of rebates.

Section 8. Section 377.901, Florida Statutes, is created to read:

377.901 Florida Energy Council.--

(1) The Florida Energy Council is created within the Department of Environmental Protection to provide advice and

counsel to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the energy policy of the state. The council shall advise the state on current and projected energy issues, including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency, and conservation. In developing its recommendations, the council shall be guided by the principles of reliability, efficiency, affordability, and diversity.

(2)(a) The council shall be comprised of a diversity of stakeholders and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, persons representing environmental, consumer, and public health interests, and others.

(b) The council shall consist of nine voting members as follows:

1. The Secretary of Environmental Protection, or his or her designee, who shall serve as chair of the council.

2. The chair of the Public Service Commission, or his or her designee, who shall serve as vice chair of the council.

3. One member shall be the Commissioner of Agriculture, or his or her designee.

4. Two members who shall be appointed by the Governor.

5. Two members who shall be appointed by the President of the Senate.

6. Two members who shall be appointed by the Speaker of the House of Representatives.

(c) All initial members shall be appointed prior to September 1, 2006. Appointments made by the Governor, the President of the Senate, and the Speaker of the House of

Representatives shall be for terms of 2 years each. Members shall serve until their successors are appointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the term that is vacated.

(d) Members shall serve without compensation but are entitled to reimbursement for travel expenses and per diem related to council duties and responsibilities pursuant to s. 112.061.

(3) The Department of Environmental Protection shall provide primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recording shall be preserved pursuant to chapters 119 and 257.

(4) The Department of Environmental Protection may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 9. Paragraph (ccc) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is

otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ccc) Equipment, machinery, and other materials for renewable energy technologies.--

1. As used in this paragraph, the term:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen-rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

2. The sale or use of the following in the state is exempt from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in tax each state fiscal year for all taxpayers.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each state fiscal year for all taxpayers.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-100), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided in this sub-subparagraph.

3. The Department of Environmental Protection shall provide to the department a list of items eligible for the exemption provided in this paragraph.

4.a. The exemption provided in this paragraph shall be available to a purchaser only through a refund of previously paid taxes.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Environmental Protection. The application shall be developed by the Department of Environmental Protection, in consultation with the department, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

(III) The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV) A sworn statement that the information provided is accurate and that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Environmental Protection shall review the application and shall notify the applicant of any deficiencies. Upon receipt of a completed application, the Department of Environmental Protection shall evaluate the application for exemption and issue a written certification that the applicant is eligible for a refund or issue a written denial of such certification within 60 days after receipt of the application. The Department of Environmental Protection shall provide the department with a copy of each certification issued upon approval of an application.

d. Each certified applicant shall be responsible for forwarding a certified copy of the application and copies of all required documentation to the department within 6 months after certification by the Department of Environmental Protection.

e. The provisions of s. 212.095 do not apply to any refund application made pursuant to this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval by the department.

f. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

g. The Department of Environmental Protection shall be responsible for ensuring that the exemptions do not exceed the limits provided in subparagraph 2.

5. The Department of Environmental Protection shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

6. This paragraph expires July 1, 2010.

Section 10. Paragraph (y) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.--

(7) Notwithstanding any other provision of this section, the department may provide:

(y) Information relative to ss. 212.08(7)(ccc) and 220.192 to the Department of Environmental Protection for use in the conduct of its official business.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 11. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182,

those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated in ss. 220.192 and 220.193.

Section 12. Section 220.192, Florida Statutes, is created to read:

220.192 Renewable energy technologies investment tax credit.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(ccc).

(b) "Eligible costs" means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subparagraph.

(c) "Ethanol" means ethanol as defined in s. 212.08(7)(ccc).

(d) "Hydrogen fuel cell" means hydrogen fuel cell as defined in s. 212.08(7)(ccc).

(2) TAX CREDIT.--For tax years beginning on or after January 1, 2007, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2007, and ending December 31, 2010, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2007, and ending December 31, 2012, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

(3) APPLICATION PROCESS.--Any corporation wishing to obtain tax credits available under this section must submit to the Department of Environmental Protection an application for tax credit that includes a complete description of all eligible costs for which the corporation is seeking a credit and a description of the total amount of credits sought. The Department of Environmental Protection shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach the Department of Environmental Protection's certification to the tax return on which the credit is claimed. The Department of Environmental Protection shall be responsible for ensuring that the corporate income tax credits granted in each fiscal year do not exceed the limits provided for in this section. The Department of Environmental Protection is authorized to adopt the necessary rules, guidelines, and application materials for the application process.

(4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.--

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, that are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or examination or from information received from the Department of Environmental Protection, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

(c) The Department of Environmental Protection may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. The Department of Environmental Protection shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(d) The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall file an amended return or other report as provided in this paragraph within 60 days after a final order is issued following proceedings.

(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

(5) RULES.--The Department of Revenue shall have the authority to adopt rules relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(6) PUBLICATION.--The Department of Environmental Protection shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13. Section 220.193, Florida Statutes, is created to read:

220.193 Florida renewable energy production credit.--

(1) The purpose of this section is to encourage the development and expansion of facilities that produce renewable energy in Florida.

(2) As used in this section, the term:

(a) "Commission" shall mean the Florida Public Service Commission.

(b) "Florida renewable energy facility" shall mean a facility in Florida that produces renewable energy, as defined in s. 377.803.

(c) "New facility" shall mean a Florida renewable energy facility that is operationally in service after May 1, 2006.

(d) "Expanded facility" shall mean a Florida renewable energy facility that increases its electrical production by more than 5 percent after May 1, 2006.

(3) A credit against the tax imposed by this chapter shall be allowed to a taxpayer, based on the taxpayer's production and sale of electricity from a new or expanded Florida renewable energy facility. For a new facility, the credit shall be based on the taxpayer's sale of the facility's entire electrical production. For an expanded facility, the credit shall be based on the increases in the facility's electrical production that are achieved after May 1, 2006.

(a) The credit shall be $0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year.

(b) The credit may be claimed for electricity produced and sold on or after January 1, 2007. The credit may be claimed for a maximum period of 10 years, commencing with the first tax year the credit is earned. In cases of multiple expansions of the same facility which are completed in different calendar years, the taxpayer may propose staggered commencement dates for each expansion project provided that the credit attributable to each expansion is separately identified and quantified.

(c) If the credit granted pursuant to this section is not fully used in one year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8).

(d) A taxpayer that files a consolidated return in this

state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group.

(e)1. Tax credits that may be available under this section to an entity eligible under this section may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner with the same limitations.

2. The entity or its surviving or acquiring entity as described in subparagraph 1. may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitations under this section Such transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section.

3. In the event the credit provided for under this section is reduced as a result of an examination or audit by the Department of Revenue, such tax deficiency shall be recovered from the first entity or the surviving or acquiring entity to have claimed such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against any entity acquiring and claiming such credit, or in the case of multiple succeeding entities in the order of credit succession.

(f) Notwithstanding any other provision of this section, until calendar year 2011, the total credits granted by the Department of Revenue pursuant to this section shall not exceed 10 million dollars for any tax year. Thereafter, such credits shall not exceed 15 million dollars for any tax year.

(g) A taxpayer claiming a credit under this section shall be required to add back to net income that portion of its business deductions claimed on its federal return paid or

incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under this section.

(h) A taxpayer claiming credit under this section may not claim a credit under s. 220.192. A taxpayer claiming credit under s. 220.192 may not claim a credit under this section.

(4) The Department of Revenue may adopt rules to implement and administer this section, including rules prescribing forms, the documentation needed to substantiate a claim for the tax credit, and the specific procedures and guidelines for claiming the credit.

(5) This section shall take effect upon becoming law and shall apply to tax years beginning on and after January 1, 2007.

Section 14. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.--

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.--There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal

Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 2005.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on June 30, 2005.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under ss. 220.192 and 220.193.

Section 15. Subsection (2) of section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.--

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c) ~~(b)~~ The anticipated environmental impact of each proposed electrical power plant site.

(d) ~~(c)~~ Possible alternatives to the proposed plan.

(e) ~~(d)~~ The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f) ~~(e)~~ The extent to which the plan is consistent with the state comprehensive plan.

(g) ~~(f)~~ The plan with respect to the information of the state on energy availability and consumption.

Section 16. Subsection (6) of section 366.04, Florida Statutes, is amended to read:

366.04 Jurisdiction of commission.--

(6) The commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. In adopting safety standards, the commission shall, at a minimum:

(a) Adopt the 1984 edition of the National Electrical Safety Code (ANSI C2) as initial standards; and

(b) Adopt, after review, any new edition of the National Electrical Safety Code (ANSI C2).

The standards prescribed by the current 1984 edition of the National Electrical Safety Code (ANSI C2) shall constitute acceptable and adequate requirements for the protection of the safety of the public, and compliance with the minimum

requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. However, nothing herein shall be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10).

Section 17. Subsections (1) and (8) of section 366.05, Florida Statutes, are amended to read:

366.05 Powers.--

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, <u>including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service,</u> and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, <u>replacements,</u> and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, <u>including inadequacies in fuel diversity or fuel supply reliability,</u> it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will

accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

Section 18. Section 366.92, Florida Statutes, is created to read:

366.92 Florida renewable energy policy.--

(1) It is the intent of the Legislature to promote the development of renewable energy; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and at the same time, minimize the costs of power supply to electric utilities and their customers.

(2) For the purposes of this section, "Florida renewable energy resources" shall mean renewable energy, as defined in s. 377.803, that is produced in Florida.

(3) The commission shall adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable energy resources. The commission may change the goals.

The commission shall review and reestablish the goals at least once every five years.

(4) The commission may adopt rules to administer and implement the provisions of this section.

Section 19. The Florida Public Service Commission shall direct a study of the electric transmission grid in the state. The study shall look at electric system reliability to examine the efficiency and reliability of power transfer and emergency contingency conditions. In addition, the study shall examine the hardening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. A report of the results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007.

Section 20. Subsections (5), (8), (9), (12), (18), (24), and (27) of section 403.503, Florida Statutes, are amended, subsections (6) through (28) are renumbered as (7) through (29), respectively, and new subsections (6) and (16) are added to that section, to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.--As used in this act:

(5) "Application" means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information ~~proceeding and shall include the documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program~~.

(6) "Associated facilities" means, for the purpose of certification, those facilities which directly support the

construction and operation of the electrical power plant such as fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility.

(8) "Completeness" means that the application has addressed all applicable sections of the prescribed application format, and ~~but does not mean~~ that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(9) "Corridor" means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the right-of-way have been acquired by the licensee ~~applicant~~, the boundaries of the area certified shall narrow to only that land within the boundaries of the right-of-way.

(12) "Electrical power plant" means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, ~~and includes associated facilities which directly support the construction and operation of the electrical power plant and those associated transmission lines which connect the electrical~~

~~power plant to an existing transmission network or rights-of-way to which the applicant intends to connect,~~ except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act. This term includes associated facilities to be owned by the applicant which are physically connected to the electrical power plant site or which are directly connected to the electrical power plant site by other proposed associated facilities to be owned by the applicant, and associated transmission lines to be owned by the applicant which connect the electrical power plant to an existing transmission network or rights-of-way of which the applicant intends to connect. ~~An associated transmission line may include,~~ At the applicant's option, this term may include, any offsite associated facilities which will not be owned by the applicant; offsite associated facilities which are owned by the applicant but which are not directly connected to the electrical power plant site; any proposed terminal or intermediate substations or substation expansions connected to the associated transmission line; or new transmission lines, upgrades, or improvements of an existing transmission line on any portion of the applicant's electrical transmission system necessary to support the generation injected into the system from the proposed electrical power plant.

(16) "Licensee" means an applicant that has obtained a certification order for the subject project.

(19) ~~(18)~~ "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, zoning ordinance, land development code, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of

information submitted to demonstrate compliance with such regulatory requirements.

(25) ~~(24)~~ "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(28) ~~(27)~~ "Ultimate site capacity" means the maximum generating capacity for a site as certified by the board. ~~"Sufficiency" means that the application is not only complete but that all sections are sufficient in the comprehensiveness of data or in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.~~

Section 21. Subsections (1), (7), (9), and (10) of section 403.504, Florida Statutes, are amended, and new subsections (9), (10), (11), and (12) are added to that section, to read:

403.504 Department of Environmental Protection; powers and duties enumerated.--The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location, construction, and operation of electrical power plants.

(7) To conduct studies and prepare a project ~~written~~ analysis under s. 403.507.

(9) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.508(6).

(10) To act as clerk for the siting board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(12) To issue emergency orders on behalf of the board for facilities licensed under this act.

~~(9) To notify all affected agencies of the filing of a notice of intent within 15 days after receipt of the notice.~~

~~(10) To issue, with the electrical power plant certification, any license required pursuant to any federally delegated or approved permit program.~~

Section 22. Section 403.5055, Florida Statutes, is amended to read:

403.5055 Application for permits pursuant to s. 403.0885.--In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

~~(2) The department's proposed action pursuant to 40 C.F.R. s. 124.6, including any draft NPDES permit (containing the~~

~~information required under 40 C.F.R. s. 124.6(d)), shall within 130 days after the submittal of a complete application be publicly noticed and transmitted to the United States Environmental Protection Agency for its review pursuant to 33 U.S.C. s. 1342(d).~~

(2) ~~(3)~~ If available at the time the department issues its project analysis pursuant to s. 403.507(5), the department shall include in its project analysis ~~written analysis pursuant to s. 403.507(3)~~ copies of the department's proposed action pursuant to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any corresponding comments received from the United States Environmental Protection Agency, the applicant, or the general public; and the department's response to those comments.

(3) ~~(4)~~ The department shall not issue or deny the permit pursuant to s. 403.0885 in advance of the issuance of the electrical ~~electric~~ power plant certification under this part unless required to do so by the provisions of federal law. When possible, any hearing on a permit issued pursuant to s. 403.0885 shall be conducted in conjunction with the certification hearing held pursuant to this act. The department's actions on an NPDES permit shall be based on the record and recommended order of the certification hearing, if the hearing on the NPDES was conducted in conjunction with the certification hearing, and of any other proceeding held in connection with the application for an NPDES permit, timely public comments received with respect to the application, and the provisions of federal law. The department's action on an NPDES permit, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations. Nothing in this part

shall be construed to displace the department's authority as the final permitting entity under the federally approved state NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program. ~~The permit, if issued, shall be valid for no more than 5 years.~~

~~(5) The department's action on an NPDES permit renewal, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations.~~

Section 23. Section 403.506, Florida Statutes, is amended to read:

403.506 Applicability, thresholds, and certification.--

(1) The provisions of this act shall apply to any electrical power plant as defined herein, except that the provisions of this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity or to any substation to be constructed as part of an associated transmission line unless the applicant has elected to apply for certification of such plant or substation under this act. The provisions of this act shall not apply to any unit capacity expansion of 35 megawatts or less of an existing exothermic reaction cogeneration unit that was exempt from this act when it was originally built; however, this exemption shall not apply if the unit uses oil or natural gas for purposes other than unit startup. No construction of any new electrical power plant or expansion in steam generating capacity as measured by an increase in the maximum electrical generator rating of any existing electrical power plant may be undertaken after October

1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, including increases in steam turbine efficiency, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum electrical generator rating ~~operating capacity~~ of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

~~(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60. However, permits issued pursuant to s. 403.0885 shall be processed in accordance with 40 C.F.R. part 123.~~

Section 24. Section 403.5064, Florida Statutes, is amended to read:

403.5064 Application ~~Distribution of application~~; schedules.--

(1) The formal date of filing of a certification application and commencement of the certification review process shall be when the applicant submits:

(a) Copies of the certification application in a quantity and format as prescribed by rule to the department and other agencies identified in s. 403.507(2)(a).

(b) The application fee specified under s. 403.518 to the department.

(2)~~(1)~~ Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional ~~those affected or other~~ agencies or persons entitled to notice and copies of the application and any amendments. Copies of the application shall be distributed within 5 days by the applicant to these additional agencies. This distribution shall not be a basis for altering the schedule of dates for the certification process.

(3) Any amendment to the application made prior to certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered good cause for alteration of time limits pursuant to s. 403.5095.

(4)~~(2)~~ Within 7 days after the filing of an application ~~completeness has been determined~~, the department shall prepare a proposed schedule of dates for determination of completeness, submission of statements of issues, ~~determination of sufficiency, and~~ submittal of final reports, ~~from affected and other agencies~~ and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.508(3)~~(4)~~. This schedule shall be timely provided by the department to the applicant, the administrative law judge, all agencies identified pursuant to subsection (2) ~~(1)~~, and all parties. Within 7 days after the filing of the proposed schedule, the administrative

law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(5) ~~(3) Within 7 days after completeness has been determined, the applicant shall distribute copies of the application to all agencies identified by the department pursuant to subsection (1).~~ Copies of changes and amendments to the application shall be timely distributed by the applicant to all ~~affected~~ agencies and parties who have received a copy of the application.

(6) Notice of the filing of the application shall be published in accordance with the requirements of s. 403.5115.

Section 25. Section 403.5065, Florida Statutes, is amended to read:

403.5065 Appointment of administrative law judge; powers and duties.--

(1) Within 7 days after receipt of an application, ~~whether complete or not,~~ the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act. The division director shall designate an administrative law judge within 7 days after receipt of the request from the department. In designating an administrative law judge for this purpose, the division director shall, whenever practicable, assign an administrative law judge who has had prior experience or training in electrical power plant site certification proceedings. Upon being advised that an administrative law judge has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated administrative law judge, who shall docket the application.

(2) The administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and by the laws and rules of the department.

Section 26. Section 403.5066, Florida Statutes, is amended to read:

403.5066 Determination of completeness.--

(1)(a) Within 30 days after the filing of an application, affected agencies shall file a statement with the department containing each agency's recommendations on the completeness of the application.

(b) Within 40 ~~15~~ days after the filing ~~receipt~~ of an application, the department shall file a statement with the Division of Administrative Hearings, ~~and~~ with the applicant, and with all parties declaring its position with regard to the completeness~~, not the sufficiency,~~ of the application. The department's statement shall be based upon consultation with the affected agencies.

(2)~~(1)~~ If the department declares the application to be incomplete, the applicant, within 15 days after the filing of the statement by the department, shall file with the Division of Administrative Hearings, ~~and~~ with the department, and all parties ~~a statement~~:

(a) A withdrawal of ~~Agreeing with the statement of the department and withdrawing~~ the application;

(b) A statement agreeing to supply the additional information necessary to make the application complete. Such additional information shall be provided within 30 days after the issuance of the department's statement on completeness of the application. The time schedules under this act shall not be tolled if the applicant makes the application complete within 30 days after the issuance of the department's statement on

completeness of the application. A subsequent finding by the department that the application remains incomplete, based upon the additional information submitted by the applicant or upon the failure of the applicant to timely submit the additional information, tolls the time schedules under this act until the application is determined complete; ~~Agreeing with the statement of the department and agreeing to amend the application without withdrawing it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete; or~~

(c) A statement contesting the department's determination of incompleteness; or ~~contesting the statement of the department.~~

(d) A statement agreeing with the department and requesting additional time beyond 30 days to provide the information necessary to make the application complete. If the applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) ~~(2)~~ If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 21 ~~30~~ days after the filing of the statement by the department. The administrative law judge shall render a decision within 7 ~~10~~ days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute.

(c) ~~(a)~~ If the administrative law judge determines that the application was not complete ~~as filed~~, the applicant shall

withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(d) ~~(b)~~ If the administrative law judge determines that the application was complete at the time it was declared incomplete ~~filed~~, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 15 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 22 days after receipt of the additional information from the applicant submitted under paragraph (2)(b), paragraph (2)(d), or paragraph (3)(c), the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

Section 27. Section 403.50663, Florida Statutes, is created to read:

403.50663 Informational public meetings.--

(1) A local government within whose jurisdiction the power plant is proposed to be sited may hold one informational public meeting in addition to the hearings specifically authorized by this act on any matter associated with the electrical power plant proceeding. Such informational public meetings shall be held by the local government or by the regional planning council

if the local government does not hold such meeting within 70 days after the filing of the application. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electrical power plant or associated facilities, obtain comments from the public, and formulate its recommendation with respect to the proposed electrical power plant.

(2) Informational public meetings shall be held solely at the option of each local government or regional planning council if a public meeting is not held by the local government. It is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting.

(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting are not grounds for the alteration of any time limitation in this act under s. 403.5095 or grounds to deny or condition certification.

Section 28. Section 403.50665, Florida Statutes, is created to read:

403.50665 Land use consistency.--

(1) The applicant shall include in the application a statement on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of such consistency.

(2) Within 45 days after the filing of the application, each local government shall file a determination with the department, the applicant, the administrative law judge, and all parties on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed, based on the information provided in the application. Notice of the consistency determination shall be published in accordance with the requirements of s. 403.5115.

(3) If the local government issues a determination that the proposed electrical power plant is not consistent or in compliance with local land use plans and zoning ordinances, the applicant may apply to the local government for the necessary local approval to address the inconsistencies in the local government's determination. If the applicant makes such an application to the local government, the time schedules under this act shall be tolled until the local government issues its revised determination on land use and zoning or the applicant otherwise withdraws its application to the local government. If the applicant applies to the local government for necessary local land use or zoning approval, the local government shall issue a revised determination within 30 days following the conclusion of that local proceeding, and the time schedules and notice requirements under this act shall apply to such revised determination.

(4) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the department within 21 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

(5) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(6) If it is determined by the local government that the proposed site or directly associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 29. Section 403.5067, Florida Statutes, is repealed.

Section 30. Section 403.507, Florida Statutes, is amended to read:

403.507 Preliminary statements of issues, reports, project analyses, and studies.--

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department, ~~and~~ the applicant, and all parties no later than 40 ~~60~~ days after the certification application has been determined ~~distribution of the~~ complete ~~application~~. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2)(a) No later than 100 days after the certification application has been determined complete, the following agencies shall prepare reports as provided below and shall submit them to the department and the applicant ~~within 150 days after distribution of the complete application~~:

1. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management, and other such matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

~~2. The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.~~

2.~~3.~~ The water management district shall prepare a report as to matters within its jurisdiction, including but not limited to, the impact of the proposed electrical power plant on water resources, regional water supply planning, and district-owned lands and works.

3.~~4.~~ Each local government in whose jurisdiction the proposed electrical power plant is to be located shall prepare a report as to the consistency of the proposed electrical power plant with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed electrical power plant, including ~~adopted local comprehensive plans, land development regulations, and~~ any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means.

4.~~5.~~ The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

5.~~6.~~ Each ~~The~~ regional planning council shall prepare a report containing recommendations that address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186 and other matters within its jurisdiction.

6. The Department of Transportation shall address the impact of the proposed electrical power plant on matters within its jurisdiction.

(b)~~7.~~ Any other agency, if requested by the department, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may potentially be affected by the proposed electrical power plant.

~~(b) As needed to verify or supplement the studies made by the applicant in support of the application, it shall be the duty of the department to conduct, or contract for, studies of the proposed electrical power plant and site, including, but not limited to, the following, which shall be completed no later than 210 days after the complete application is filed with the department:~~

~~1. Cooling system requirements.~~

~~2. Construction and operational safeguards.~~

~~3. Proximity to transportation systems.~~

~~4. Soil and foundation conditions.~~

~~5. Impact on suitable present and projected water supplies for this and other competing uses.~~

~~6. Impact on surrounding land uses.~~

~~7. Accessibility to transmission corridors.~~

~~8. Environmental impacts.~~

~~9. Requirements applicable under any federally delegated or approved permit program.~~

(3) ~~(c)~~ Each report described in subsection (2) ~~paragraphs (a) and (b)~~ shall contain:

(a) A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception ~~all information on variances, exemptions, exceptions~~, or other relief is necessary in order for the proposed electrical power plant to be certified. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of that agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program. ~~which may be required by s. 403.511(2) and~~

(b) A recommendation for approval or denial of the application.

(c) Any proposed conditions of certification on matters within the jurisdiction of such agency. For each condition proposed by an agency in its report, the agency shall list the specific statute, rule, or ordinance which authorizes the proposed condition.

(d) The agencies shall initiate the activities required by this section no later than 15 ~~30~~ days after the ~~complete~~ application is distributed. The agencies shall keep the applicant and the department informed as to the progress of the studies and any issues raised thereby.

~~(3) No later than 60 days after the application for a federally required new source review or prevention of significant deterioration permit for the electrical power plant is complete and sufficient, the department shall issue its~~

~~preliminary determination on such permit. Notice of such determination shall be published as required by the department's rules for notices of such permits. The department shall receive public comments and comments from the United States Environmental Protection Agency and other affected agencies on the preliminary determination as provided for in the federally approved state implementation plan. The department shall maintain a record of all comments received and considered in taking action on such permits. If a petition for an administrative hearing on the department's preliminary determination is filed by a substantially affected person, that hearing shall be consolidated with the certification hearing.~~

(4)(a) No later than 150 days after the application is filed, the Public Service Commission shall prepare a report as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

(b) Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to issuance of the department's project analysis and conduct of the certification hearing.

(5) ~~(4)~~ The department shall prepare a project ~~written~~ analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 ~~240~~ days after the ~~complete~~ application is determined complete ~~filed with the department, but no later than 60 days prior to the hearing~~, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in

compliance and consistent with matters within the department's standard jurisdiction, including ~~with~~ the rules of the department, as well as whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the nonprocedural requirements of the affected agencies.

(b) Copies of the studies and reports required by this section ~~and s. 403.519~~.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(e) If available, the recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

~~(f) Copies of the department's draft of the operation permit for a major source of air pollution, which must also be provided to the United States Environmental Protection Agency for review within 5 days after issuance of the written analysis.~~

(6) ~~(5)~~ Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report are ~~shall be~~ grounds to deny or condition certification.

Section 31. Section 403.508, Florida Statutes, is amended to read:

403.508 Land use and certification hearings ~~proceedings~~, parties, participants.--

(1)(a) If a petition for a hearing on land use has been filed pursuant to s. 403.50665, the designated administrative law judge shall conduct a land use hearing in the county of the proposed site or directly associated facility, as applicable, as expeditiously as possible, but not later than 30 ~~within 90~~ days after the department's receipt of the petition ~~a complete application for electrical power plant site certification by the department~~. The place of such hearing shall be as close as possible to the proposed site or directly associated facility. If a petition is filed, the hearing shall be held regardless of the status of the completeness of the application. However, incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances under s. 403.50665.

(b) Notice of the land use hearing shall be published in accordance with the requirements of s. 403.5115.

(c)~~(2)~~ The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. If the administrative law judge concludes that the proposed site is not consistent or in compliance with existing land use plans and zoning ordinances, the administrative law judge shall receive at the hearing evidence on, and address in the recommended order any changes to or approvals or variances under, the applicable land use plans or zoning ordinances which will render the proposed site consistent and in compliance with the local land use plans and zoning ordinances.

(d) The designated administrative law judge's recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 60 ~~45~~ days after receipt of the recommended order by the board.

(e) If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, or as otherwise provided by this act, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of ~~affect~~ the proposed electrical power plant on the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

(f) If it is determined by the board that the proposed site does not conform with existing land use plans and zoning ordinances, ~~it shall be the responsibility of the applicant to make the necessary application for rezoning. Should the application for rezoning be denied, the applicant may appeal this decision to~~ the board~~, which~~ may, if it determines after notice and hearing and upon consideration of the recommended order on land use and zoning issues that it is in the public interest to authorize the use of the land as a site for an electrical power plant, authorize a variance or other necessary approval to the adopted land use plan and zoning ordinances required to render the proposed site consistent with local land use plans and zoning ordinances. The board's action shall not be controlled by any other procedural requirements of law. In the event a variance or other approval is denied by the board, it shall be the responsibility of the applicant to make the necessary application for any approvals determined by the board as required to make the proposed site consistent and in

compliance with local land use plans and zoning ordinances. No further action may be taken on the complete application ~~by the department~~ until the proposed site conforms to the adopted land use plan or zoning ordinances or the board grants relief as provided under this act.

(2)(a) ~~(3)~~ A certification hearing shall be held by the designated administrative law judge no later than 265 ~~300~~ days after the ~~complete~~ application is filed with the department~~;~~ ~~however, an affirmative determination of need by the Public Service Commission pursuant to s. 403.519 shall be a condition precedent to the conduct of the certification hearing~~. The certification hearing shall be held at a location in proximity to the proposed site. ~~The certification hearing shall also constitute the sole hearing allowed by chapter 120 to determine the substantial interest of a party regarding any required agency license or any related permit required pursuant to any federally delegated or approved permit program.~~ At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 ~~60~~ days after the filing of the hearing transcript. ~~In the event the administrative law judge fails to issue a recommended order within 60 days after the filing of the hearing transcript, the administrative law judge shall submit a report to the board with a copy to all parties within 60 days after the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended order will be issued.~~

(b) Notice of the certification hearing and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5115.

(3)(a) ~~(4)(a)~~ Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Community Affairs.
4. The Fish and Wildlife Conservation Commission.
5. The water management district.
6. The department.
7. The regional planning council.
8. The local government.
9. The Department of Transportation.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120, upon the filing with the administrative law judge of a notice of intent to be a party no later than 75 days after the application is filed ~~at least 15 days prior to the date of the land use hearing~~, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or

industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed electrical power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency described in subparagraph (c)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated administrative law judge and upon such conditions as he or she may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are being affected pursuant to s. 403.509(4), shall be made a party upon the request of the department or the applicant.

(4)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant.

2. The department.

3. State agencies.

4. Regional agencies, including regional planning councils and water management districts.

5. Local governments.

6. Other parties.

(b) ~~(5)~~ When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge. If the designated administrative law judge proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(5) At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.

(6)(a) No earlier than 29 days prior to the conduct of the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of fact or law to be raised at the certification hearing, and if sufficient time remains for the applicant and the department to publish public notices of the cancellation of the hearing at least 3 days prior to the scheduled date of the hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days after receipt of the request.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing, in accordance with s. 403.5115.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in

accordance with s. 403.509(1)(a).

2. Parties may submit proposed recommended orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

~~(6) The designated administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and this chapter and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness and sufficiency of an application for certification.~~

~~(7) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:~~

~~(a) The applicant.~~

~~(b) The department.~~

~~(c) State agencies.~~

~~(d) Regional agencies, including regional planning councils and water management districts.~~

~~(e) Local governments.~~

~~(f) Other parties.~~

(8) In issuing permits under the federally approved new source review or prevention of significant deterioration permit program, the department shall observe the procedures specified under the federally approved state implementation plan, including public notice, public comment, public hearing, and notice of applications and amendments to federal, state, and local agencies, to assure that all such permits issued in

coordination with the certification of a power plant under this act are federally enforceable and are issued after opportunity for informed public participation regarding the terms and conditions thereof. When possible, any hearing on a federally approved or delegated program permit such as new source review, prevention of significant deterioration permit, or NPDES permit shall be conducted in conjunction with the certification hearing held under this act. ~~The department shall accept written comment with respect to an application for, or the department's preliminary determination on, a new source review or prevention of significant deterioration permit for a period of no less than 30 days from the date notice of such action is published. Upon request submitted within 30 days after published notice, the department shall hold a public meeting, in the area affected, for the purpose of receiving public comment on issues related to the new source review or prevention of significant deterioration permit. If requested following notice of the department's preliminary determination, the public meeting to receive public comment shall be held prior to the scheduled certification hearing. The department shall also solicit comments from the United States Environmental Protection Agency and other affected federal agencies regarding the department's preliminary determination for any federally required new source review or prevention of significant deterioration permit.~~ It is the intent of the Legislature that the review, processing, and issuance of such federally delegated or approved permits be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures ~~contained in the state implementation plan,~~ the applicable federal requirements ~~of the implementation plan~~ shall control.

Section 32. Section 403.509, Florida Statutes, is amended to read:

403.509 Final disposition of application.--

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under the provisions of s. 403.508(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing.

(b) If the administrative law judge has not granted a request to cancel the certification hearing under the provisions of s. 403.508(6), within 60 days after receipt of the designated administrative law judge's recommended order, the board shall act upon the application by written order, approving ~~certification~~ or denying certification ~~the issuance of a certificate~~, in accordance with the terms of this act, and stating the reasons for issuance or denial. If certification ~~the certificate~~ is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(3) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of the electrical

power plant and directly associated facilities and their construction and operation will:

(a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.

(b) Comply with applicable nonprocedural requirements of agencies.

(c) Be consistent with applicable local government comprehensive plans and land development regulations.

(d) Meet the electrical energy needs of the state in an orderly and timely fashion.

(e) Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519, and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.

(f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

(g) Serve and protect the broad interests of the public.

~~(3) Within 30 days after issuance of the certification, the department shall issue and forward to the United States Environmental Protection Agency a proposed operation permit for a major source of air pollution and must issue or deny any other license required pursuant to any federally delegated or approved permit program. The department's action on the license and its action on the proposed operation permit for a major source of air pollution shall be based upon the record and recommended order of the certification hearing. The department's actions on a federally required new source review or prevention of~~

~~significant deterioration permit shall be based on the record and recommended order of the certification hearing and of any other proceeding held in connection with the application for a new source review or prevention of significant deterioration permit, on timely public comments received with respect to the application or preliminary determination for such permit, and on the provisions of the state implementation plan.~~

(4) The department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program. Nothing in this part shall be construed to authorize the issuance of a new source review or prevention of significant deterioration permit which does not conform to the requirements of the federally approved state implementation plan. ~~Any final operation permit for a major source of air pollution must be issued in accordance with the provisions of s. 403.0872. Unless the federally delegated or approved permit program provides otherwise, licenses issued by the department under this subsection shall be effective for the term of the certification issued by the board. If renewal of any license issued by the department pursuant to a federally delegated or approved permit program is required, such renewal shall not affect the certification issued by the board, except as necessary to resolve inconsistencies pursuant to s. 403.516(1)(a).~~

(5) ~~(4)~~ In regard to the properties and works of any agency which is a party to the certification hearing, the board shall

have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and directly associated facilities ~~site~~ and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

(6) ~~(5) Except for the issuance of any operation permit for a major source of air pollution pursuant to s. 403.0872,~~ The issuance or denial of the certification by the board or secretary of the department ~~and the issuance or denial of any related department license required pursuant to any federally delegated or approved permit program~~ shall be the final administrative action required as to that application.

~~(6) All certified electrical power plants must apply for and obtain a major source air-operation permit pursuant to s. 403.0872. Major source air-operation permit applications for certified electrical power plants must be submitted pursuant to a schedule developed by the department. To the extent that any conflicting provision, limitation, or restriction under any rule, regulation, or ordinance imposed by any political subdivision of the state, or by any local pollution control program, was superseded during the certification process pursuant to s. 403.510(1), such rule, regulation, or ordinance shall continue to be superseded for purposes of the major source air-operation permit program under s. 403.0872.~~

Section 33. Section 403.511, Florida Statutes, is amended to read:

403.511 Effect of certification.--

(1) Subject to the conditions set forth therein, any certification ~~signed by the Governor~~ shall constitute the sole

license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee ~~applicant~~ named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b)1. Except as provided in subsection (4), the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency ~~as provided below~~ and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order ~~by the siting board~~ that the public interests set forth in s. 403.509(3) ~~403.502~~ in certifying the electrical power plant at the site proposed by

the applicant overrides the public interest protected by the statute or rule from which relief is sought. ~~Each party shall notify the applicant and other parties at least 60 days prior to the certification hearing of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any electrical power plant proposed for certification. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of the department or any other agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.~~

(3) The certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, except for permits issued pursuant to any federally delegated or approved permit program ~~s. 403.0885~~ and except as provided in ~~s. 403.509(3) and (6),~~ chapter 404~~,~~ or the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4) This act shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the department, any holder of a certification issued pursuant to this act may choose to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

(6) No term or condition of a site certification shall be interpreted to supersede or control the provisions of a final operation permit for a major source of air pollution issued by the department pursuant to s. 403.0872 to <u>a</u> ~~such~~ facility certified under this part.

<u>(7) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.</u>

Section 34. Section 403.5112, Florida Statutes, is created to read:

403.5112 Filing of notice of certified corridor route.--

(1) Within 60 days after certification of a directly associated linear facility pursuant to this act, the applicant shall file, in accordance with s. 28.222, with the department and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner.

Section 35. Section 403.5113, Florida Statutes, is created to read:

403.5113 Postcertification amendments.--

(1) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed change to the application requires a modification of the conditions of certification.

(2) If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

(3) If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

(4) Postcertification submittals filed by the licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification and must be reviewed by the agencies on an expedited and priority basis because each facility certified under this act is a critical infrastructure facility. In no event shall a postcertification review be completed in more than 90 days after complete information is submitted to the reviewing agencies.

Section 36. Section 403.5115, Florida Statutes, is amended to read:

403.5115 Public notice~~; costs of proceeding~~.--

(1) The following notices are to be published by the applicant:

(a) Notice ~~A notice~~ of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice ~~A notice~~ of filing of the application, which shall include a description of the proceedings required by this

act, within 21 days after the date of the application filing ~~be published as specified in subsection (2), within 15 days after the application has been determined complete~~. Such notice shall give notice of the provisions of s. 403.511(1) and (2) ~~and that the application constitutes a request for a federally required new source review or prevention of significant deterioration permit~~.

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 21 days after the determination is filed.

(d) Notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 ~~45~~ days before the hearing.

(e) ~~(d)~~ Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification ~~no later than 45 days before the~~ hearing.

(f) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days before the date of the originally scheduled certification hearing.

(g) ~~(e)~~ Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification.~~, except that~~ The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no

later than 30 days before the hearing ~~provided as specified in paragraph (d)~~.

(h) ~~(f)~~ Notice of a supplemental application, which shall be published as specified in paragraph (b) and subsection (2). ~~follows:~~

~~1. Notice of receipt of the supplemental application shall be published as specified in paragraph (b).~~

~~2. Notice of the certification hearing shall be published as specified in paragraph (d).~~

(i) Notice of existing site certification pursuant to s. 403.5175. Notices shall be published as specified in paragraph (b) and subsection (2).

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper ~~and published in a section of the newspaper other than the legal notices section~~. These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose:

(a) Notice ~~Publish in the Florida Administrative Weekly notices~~ of the filing of the notice of intent within 15 days after receipt of the notice.~~;~~

(b) Notice of the filing of the application, no later than 21 days after the application filing.~~;~~

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 21 days after the determination is filed.

(d) Notice of the land use hearing before the administrative law judge, if applicable, no later than 15 days before the hearing.~~;~~

(e) Notice of the land use hearing before the board, if applicable.

(f) Notice of the certification hearing at least 45 days before the date set for the certification hearing.~~;~~

(g) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days prior to the date of the originally scheduled certification hearing.

(h) Notice of the hearing before the board, if applicable.~~;~~

(i) Notice ~~and~~ of stipulations, proposed agency action, or petitions for modification.~~; and~~

~~(b) Provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose.~~

~~(5) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.~~

Section 37. Section 403.513, Florida Statutes, is amended to read:

403.513 Review.--Proceedings under this act shall be subject to judicial review as provided in chapter 120. When possible, separate appeals of the certification order issued by the board and of any department permit issued pursuant to a federally delegated or approved permit program may ~~shall~~ be consolidated for purposes of judicial review.

Section 38. Section 403.516, Florida Statutes, is amended to read:

403.516 Modification of certification.--

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b)1. The department may modify specific conditions of a site certification which are inconsistent with the terms of any federally delegated or approved ~~final air pollution operation~~ permit for the certified electrical power plant ~~issued by the United States Environmental Protection Agency under the terms of 42 U.S.C. s. 7661d~~.

2. Such modification may be made without further notice if the matter has been previously noticed under the requirements for any federally delegated or approved permit program.

(c) The licensee may file a petition for modification with the department, or the department may initiate the modification upon its own initiative.

1. A petition for modification must set forth:

a. The proposed modification.

b. The factual reasons asserted for the modification.

c. The anticipated environmental effects of the proposed modification.

2. ~~(b)~~ The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

3. If objections are raised or the department denies the request, the applicant or department may file a request ~~petition~~ for a hearing on the modification with the department. Such request shall be handled pursuant to chapter 120 ~~paragraph (c)~~.

~~(c) A petition for modification may be filed by the applicant or the department setting forth:~~

~~1. The proposed modification,~~

~~2. The factual reasons asserted for the modification, and~~

~~3. The anticipated effects of the proposed modification on the applicant, the public, and the environment.~~

~~The petition for modification shall be filed with the department and the Division of Administrative Hearings.~~

4. Requests referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(d) As required by s. 403.511(5).

~~(2) Petitions filed pursuant to paragraph (1)(c) shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.~~

(2)~~(3)~~ Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 39. Section 403.517, Florida Statutes, is amended to read:

403.517 Supplemental applications for sites certified for ultimate site capacity.--

(1)(a) Supplemental ~~The department shall adopt rules governing the processing of supplemental~~ applications may be submitted for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. Such applications shall include all new directly associated facilities that support the construction and operation of the electrical power plant. ~~The rules adopted pursuant to this section shall include provisions for:~~

~~1. Prompt appointment of a designated administrative law judge.~~

~~2. The contents of the supplemental application.~~

~~3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.~~

~~4. Public notice of the filing of the supplemental applications.~~

~~5. Time limits for prompt processing of supplemental applications.~~

~~6. Final disposition by the board within 215 days of the filing of a complete supplemental application.~~

(b) The review shall use the same procedural steps and notices as for an initial application.

(c) The time limits for the processing of a complete supplemental application shall be designated by the department commensurate with the scope of the supplemental application, but shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(d) ~~(c)~~ Any time limitation in this section or in rules adopted pursuant to this section may be altered pursuant to s. 403.5095 ~~by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 and this act in considering and processing such supplemental applications~~.

(2) ~~Supplemental applications shall be reviewed as provided in ss. 403.507-403.511, except that the time limits provided in this section shall apply to such supplemental applications.~~

~~(3)~~ The land use and zoning consistency determination of s. 403.50665 ~~hearing requirements of s. 403.508(1) and (2)~~ shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

~~(4) For the purposes of this act, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.~~

Section 40. Section 403.5175, Florida Statutes, is amended to read:

403.5175 Existing electrical power plant site certification.--

(1) An electric utility that owns or operates an existing electrical power plant as defined in s. 403.503(12) may apply for certification of an existing power plant and its site in order to obtain all agency licenses necessary to ensure ~~assure~~ compliance with federal or state environmental laws and regulation using the centrally coordinated, one-stop licensing process established by this part. An application for site certification under this section must be in the form prescribed by department rule. Applications must be reviewed and processed using the same procedural steps and notices as for an application for a new facility ~~in accordance with ss. 403.5064-403.5115~~, except that a determination of need by the Public Service Commission is not required.

(2) An application for certification under this section must include:

(a) A description of the site and existing power plant installations;

(b) A description of all proposed changes or alterations to the site or electrical power plant, including all new associated facilities that are the subject of the application;

(c) A description of the environmental and other impacts caused by the existing utilization of the site and directly associated facilities, and the operation of the electrical power plant that is the subject of the application, and of the environmental and other benefits, if any, to be realized as a result of the proposed changes or alterations if certification is approved and such other information as is necessary for the reviewing agencies to evaluate the proposed changes and the expected impacts;

(d) The justification for the proposed changes or alterations;

(e) Copies of all existing permits, licenses, and compliance plans authorizing utilization of the site and directly associated facilities or operation of the electrical power plant that is the subject of the application.

(3) The land use and zoning determination ~~hearing~~ requirements of s. 403.50665 ~~s. 403.508(1) and (2)~~ do not apply to an application under this section if the applicant does not propose to expand the boundaries of the existing site. If the applicant proposes to expand the boundaries of the existing site to accommodate portions of the plant or associated facilities, a land use and zoning determination shall be made ~~hearing must be held~~ as specified in s. 403.50665 ~~s. 403.508(1) and (2)~~; provided, however, that the sole issue for determination ~~through~~

~~the land use hearing~~ is whether the proposed site expansion is consistent and in compliance with the existing land use plans and zoning ordinances.

(4) In considering whether an application submitted under this section should be approved in whole, approved with appropriate conditions, or denied, the board shall consider whether, and to the extent to which the proposed changes to the electrical power plant and its continued operation under certification will:

(a) Comply with the provisions of s. 403.509(3). ~~applicable nonprocedural requirements of agencies;~~

(b) Result in environmental or other benefits compared to current utilization of the site and operations of the electrical power plant if the proposed changes or alterations are undertaken.~~;~~

~~(c) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life; and~~

~~(d) Serve and protect the broad interests of the public.~~

(5) An applicant's failure to receive approval for certification of an existing site or an electrical power plant under this section is without prejudice to continued operation of the electrical power plant or site under existing agency licenses.

Section 41. Section 403.518, Florida Statutes, is amended to read:

403.518 Fees; disposition.--

~~(1)~~ The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1) ~~(a)~~ A fee for a notice of intent pursuant to s. 403.5063, in the amount of $2,500, to be submitted to the department at the time of filing of a notice of intent. The notice-of-intent fee shall be used and disbursed in the same manner as the application fee.

(2) ~~(b)~~ An application fee, which shall not exceed $200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in electrical generating capacity proposed by the application~~, or the number and size of local governments in whose jurisdiction the electrical power plant is located~~.

(a) ~~1.~~ Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review ~~reviewing~~ and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

(b) ~~2.~~ The following percentages ~~Twenty percent of the fee or $25,000, whichever is greater,~~ shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services: ~~.~~

1. Five percent to compensate expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 5 percent if a land use hearing is held pursuant to s. 403.508.

3. An additional 10 percent if a certification hearing is held pursuant to s. 403.508.

(c) 1. ~~3.~~ Upon written request with proper itemized accounting within 90 days after final agency action by the board or withdrawal of the application, the agencies that prepared reports pursuant to s. 403.507 or participated in a hearing

pursuant to s. 403.508 may submit a written request to the department for reimbursement of expenses incurred during the certification proceedings. The request shall contain an accounting of expenses incurred which may include time spent reviewing the application, ~~the department shall reimburse the Department of Community Affairs, the Fish and Wildlife Conservation Commission, and any water management district created pursuant to chapter 373, regional planning council, and local government in the jurisdiction of which the proposed electrical power plant is to be located, and any other agency from which the department requests special studies pursuant to s. 403.507(2)(a)7. Such reimbursement shall be authorized for~~ the preparation of any studies required of the agencies by this act, ~~and for~~ agency travel and per diem to attend any hearing held pursuant to this act, and for any agency or local government's provision of notice of public meetings or hearings required as a result of the application for certification ~~governments to participate in the proceedings~~. The department shall review the request and verify that the expenses are valid. Valid expenses shall be reimbursed; however, in the event the amount of funds available for reimbursement ~~allocation~~ is insufficient to provide for full compensation ~~complete reimbursement~~ to the agencies requesting reimbursement, reimbursement shall be on a prorated basis.

2. If the application review is held in abeyance for more than 1 year, the agencies may submit a request for reimbursement.

(d) ~~4.~~ If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this act; provided, however, that if the

certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after withdrawal.

(3)(a) ~~(c)~~ A certification modification fee, which shall not exceed $30,000. The department shall establish rules for determining such a fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

(b) The fee shall be submitted to the department with a ~~formal~~ petition for modification ~~to the department~~ pursuant to s. 403.516. This fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (2) ~~paragraph (b)~~, except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only $10,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. ~~The fee for a modification by agreement filed pursuant to s. 403.516(1)(b) shall be $10,000 to be paid upon the filing of the request for modification. Any sums remaining after payment of authorized costs shall be refunded to the applicant within 90 days of issuance or denial of the modification or withdrawal of the request for modification.~~

(4) ~~(d)~~ A supplemental application fee, not to exceed $75,000, to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and processed in the same manner as the certification application fee in subsection (2) ~~paragraph (b), except that only $20,000 of the fee shall be transferred to the Administrative Trust Fund of~~

~~the Division of Administrative Hearings of the Department of Management Services~~.

(5) ~~(e)~~ An existing site certification application fee, not to exceed $200,000, to cover all reasonable costs and expenses of the review processing and proceedings for certification of an existing power plant site under s. 403.5175. This fee must be established, disbursed, and processed in the same manner as the certification application fee in subsection (2) ~~paragraph (b)~~.

~~(2) Effective upon the date commercial operation begins, the operator of an electrical power plant certified under this part is required to pay to the department an annual operation license fee as specified in s. 403.0872(11) to be deposited in the Air Pollution Control Trust Fund.~~

Section 42. Any application for electrical power plant certification filed pursuant to ss. 403.501-403.518, Florida Statutes, shall be processed under the provisions of the law applicable at the time the application was filed, except that the provisions relating to cancellation of the certification hearing under s. 403.508(6), Florida Statutes, the provisions relating to the final disposition of the application and issuance of the written order by the secretary under s. 403.509(1)(a), Florida Statutes, and notice of the cancellation of the certification hearing under s. 403.5115, Florida Statutes, may apply to any application for electrical power plant certification.

Section 43. Section 403.519, Florida Statutes, is amended to read:

403.519 Exclusive forum for determination of need.--

(1) On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an

electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(2) The applicant ~~commission~~ shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 ~~45~~ days prior to the scheduled date for the proceeding. The commission shall publish notice of the proceeding in the manner specified by chapter 120 at least 21 days prior to the scheduled date for the proceeding.

(3) The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4) ~~403.507(2)(a)2~~. An order entered pursuant to this section constitutes final agency action.

Section 44. Section 403.52, Florida Statutes, is amended to read:

403.52 Short title.--Sections 403.52-403.5365 may be cited as the "Florida Electric Transmission Line Siting Act."

Section 45. Section 403.521, Florida Statutes, is amended to read:

403.521 Legislative intent.--The legislative intent of this act is to establish a centralized and coordinated licensing ~~permitting~~ process for the location of electric transmission line corridors and the construction, operation, and maintenance of electric transmission lines, which are critical infrastructure facilities. This necessarily involves several broad interests of the public addressed through the subject matter jurisdiction of several agencies. The Legislature recognizes that electric transmission lines will have an effect upon the reliability of the electric power system, the environment, land use, and the welfare of the population. Recognizing the need to ensure electric power system reliability and integrity, and in order to meet electric ~~electrical~~ energy needs in an orderly and timely fashion, the centralized and coordinated licensing ~~permitting~~ process established by this act is intended to further the legislative goal of ensuring through available and reasonable methods that the location of transmission line corridors and the construction, operation, and maintenance of electric transmission lines produce minimal adverse effects on the environment and public health, safety, and welfare ~~while not unduly conflicting with the goals established by the applicable local comprehensive plan~~. It is the intent of this act to fully balance the need for transmission lines with the broad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing reliable, economical, and efficient electric ~~abundant low-cost electrical~~ energy and the

impact on the public and the environment resulting from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines. The Legislature intends that the provisions of chapter 120 apply to this act and to proceedings under ~~pursuant to~~ it except as otherwise expressly exempted by other provisions of this act.

Section 46. Section 403.522, Florida Statutes, is amended to read:

403.522 Definitions relating to the Florida Electric Transmission Line Siting Act.--As used in this act:

(1) "Act" means the Florida Electric Transmission Line Siting Act.

(2) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including a county, municipality, or other regional or local governmental entity.

(3) "Amendment" means a material change in information provided by the applicant to the application for certification made after the initial application filing.

(4) "Applicant" means any electric utility that ~~which~~ applies for certification under ~~pursuant to the provisions of~~ this act.

(5) "Application" means the documents required by the department to be filed to initiate and support a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information ~~proceeding~~. An electric utility may file a comprehensive application encompassing all or a part of one or more proposed transmission lines.

(6) "Board" means the Governor and Cabinet sitting as the siting board.

(7) "Certification" means the approval by the board of the license for a corridor proper for certification pursuant to subsection (10) and the construction, operation, and maintenance of transmission lines within the ~~such~~ corridor with the ~~such~~ changes or conditions as the siting board deems appropriate. Certification shall be evidenced by a written order of the board.

(8) "Commission" means the Florida Public Service Commission.

(9) "Completeness" means that the application has addressed all applicable sections of the prescribed application format and~~, but does not mean~~ that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.526.

(10) "Corridor" means the proposed area within which a transmission line right-of-way, including maintenance and access roads, is to be located. The width of the corridor proposed for certification by an applicant or other party, at the option of the applicant, may be the width of the transmission line right-of-way, or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the transmission line right-of-way and maintenance and access roads have been acquired by the applicant, the boundaries of the area certified shall narrow to only that land within the boundaries of the transmission line right-of-way. The corridors proper for

certification shall be those addressed in the application, in amendments to the application filed under ~~pursuant to~~ s. 403.5275, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to s. 403.5271 for which the required ~~sufficient~~ information for the preparation of agency supplemental reports was filed.

(11) "Department" means the Department of Environmental Protection.

(12) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, regional transmission organizations, operators of independent transmission systems, or other transmission organizations approved by the Federal Energy Regulatory Commission or the commission for the operation of transmission facilities, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

(13) "License" means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order, or permit as defined in chapters 163 and 380, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(14) "Licensee" means an applicant that has obtained a certification order for the subject project.

(15) ~~(14)~~ "Local government" means a municipality or county in the jurisdiction of which the project is proposed to be located.

(16) "Maintenance and access roads" mean roads constructed within the transmission line right-of-way. Nothing in this act prohibits an applicant from constructing a road to support

construction, operation, or maintenance of the transmission line that lies outside the transmission line right-of-way.

(17) ~~(15)~~ "Modification" means any change in the certification order after issuance, including a change in the conditions of certification.

(18) ~~(16)~~ "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(19) ~~(17)~~ "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(20) ~~(18)~~ "Preliminary statement of issues" means a listing and explanation of those issues within the agency's jurisdiction which are of major concern to the agency in relation to the proposed electric ~~electrical~~ transmission line corridor.

(21) ~~(19)~~ "Regional planning council" means a regional planning council as defined in s. 186.503(4) in the jurisdiction of which the project is proposed to be located.

~~(20) "Sufficiency" means that the application is not only complete but that all sections are adequate in the comprehensiveness of data and in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports authorized by s. 403.526.~~

(22) ~~(21)~~ "Transmission line" or "electric transmission line" means structures, maintenance and access roads, and all

other facilities that need to be constructed, operated, or maintained for the purpose of conveying electric power ~~any electrical transmission line~~ extending from, but not including, an existing or proposed substation or power plant to, but not including, an existing or proposed transmission network or rights-of-way or substation to which the applicant intends to connect which defines the end of the proposed project and which is designed to operate at 230 kilovolts or more. ~~The starting point and ending point of a transmission line must be specifically defined by the applicant and must be verified by the commission in its determination of need. A transmission line includes structures and maintenance and access roads that need to be constructed for the project to become operational.~~ The transmission line may include, at the applicant's option, any proposed terminal or intermediate substations or substation expansions necessary to serve the transmission line.

(23) ~~(22)~~ "Transmission line right-of-way" means land necessary for the construction, operation, and maintenance of a transmission line. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant ~~subsequent to certification~~ in documents filed with the department before ~~prior to~~ construction.

(24) ~~(23)~~ "Water management district" means a water management district created pursuant to chapter 373 in the jurisdiction of which the project is proposed to be located.

Section 47. Section 403.523, Florida Statutes, is amended to read:

403.523 Department of Environmental Protection; powers and duties.--The department has ~~shall have~~ the following powers and duties:

(1) To adopt procedural rules pursuant to ss. 120.536(1) and 120.54 to administer ~~implement the provisions of~~ this act and to adopt or amend rules to implement the provisions of subsection (10).

(2) To prescribe the form and content of the public notices and the form, content, and necessary supporting documentation, and any required studies, for certification applications. All ~~such~~ data and studies shall be related to the jurisdiction of the agencies relevant to the application.

(3) To receive applications for transmission line and corridor certifications and initially determine the completeness ~~and sufficiency~~ thereof.

(4) To make or contract for studies of certification applications. All ~~such~~ studies shall be related to the jurisdiction of the agencies relevant to the application. For studies in areas outside the jurisdiction of the department and in the jurisdiction of another agency, the department may initiate such studies, but only with the consent of the ~~such~~ agency.

(5) To administer the processing of applications for certification and ensure that the applications, including postcertification reviews, are processed on an expeditious and priority basis ~~as expeditiously as possible~~.

(6) To collect and process ~~require~~ such fees as allowed by this act.

(7) To prepare a report and project ~~written~~ analysis as required by s. 403.526.

(8) To prescribe the means for monitoring the effects arising from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission

lines to assure continued compliance with the terms of the certification.

(9) To make a determination of acceptability of any alternate corridor proposed for consideration under ~~pursuant to~~ s. 403.5271.

(10) To set requirements that reasonably protect the public health and welfare from the electric and magnetic fields of transmission lines for which an application is filed under ~~after the effective date of~~ this act.

(11) To present rebuttal evidence on any issue properly raised at the certification hearing.

(12) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.527(6).

(13) To act as clerk for the siting board.

(14) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(15) To issue emergency orders on behalf of the board for facilities licensed under this act.

Section 48. Section 403.524, Florida Statutes, is amended to read:

403.524 Applicability; ~~and~~ certification; exemptions.--

(1) ~~The provisions of~~ This act applies ~~apply~~ to each transmission line, except a transmission line certified under ~~pursuant to~~ the Florida Electrical Power Plant Siting Act.

(2) Except as provided in subsection (1), ~~no~~ construction of a ~~any~~ transmission line may not be undertaken without first obtaining certification under this act, but ~~the provisions of~~ this act does ~~do~~ not apply to:

(a) Transmission lines for which development approval has been obtained under ~~pursuant to~~ chapter 380.

(b) Transmission lines that ~~which~~ have been exempted by a binding letter of interpretation issued under s. 380.06(4), or in which the Department of Community Affairs or its predecessor agency has determined the utility to have vested development rights within the meaning of s. 380.05(18) or s. 380.06(20).

(c) Transmission line development in which all construction is limited to established rights-of-way. Established rights-of-way include ~~such~~ rights-of-way established at any time for roads, highways, railroads, gas, water, oil, electricity, or sewage and any other public purpose rights-of-way. If an established transmission line right-of-way is used to qualify for this exemption, the transmission line right-of-way must have been established at least 5 years before notice of the start of construction under subsection (4) of the proposed transmission line. If an established transmission line right-of-way is relocated to accommodate a public project, the date the original transmission line right-of-way was established applies to the relocated transmission line right-of-way for purposes of this exemption. ~~Except for transmission line rights-of-way, established rights-of-way include rights-of-way created before or after October 1, 1983. For transmission line rights-of-way, established rights-of-way include rights-of-way created before October 1, 1983.~~

(d) Unless the applicant has applied for certification under this act, transmission lines that ~~which~~ are less than 15 miles in length or are located in a single ~~which do not cross a~~ county within the state ~~line, unless the applicant has elected to apply for certification under the act~~.

(3) The exemption of a transmission line under this act does not constitute an exemption for the transmission line from other applicable permitting processes under other provisions of law or local government ordinances.

(4) An electric ~~A~~ utility shall notify the department in writing, before ~~prior to~~ the start of construction, of its intent to construct a transmission line exempted under ~~pursuant to~~ this section. The ~~Such~~ notice is ~~shall be~~ only for information purposes, and ~~no~~ action by the department is not ~~shall be~~ required pursuant to the ~~such~~ notice. This notice may be included in any submittal filed with the department before the start of construction demonstrating that a new transmission line complies with the applicable electric and magnetic field standards.

Section 49. Section 403.525, Florida Statutes, is amended to read:

403.525 ~~Appointment of~~ Administrative law judge; appointment; powers and duties.--

(1)(a) Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act.

(b) The division director shall designate an administrative law judge to conduct the hearings required by this act within 7 days after receipt of the request from the department. Whenever practicable, the division director shall assign an administrative law judge who has had prior experience or training in this type of certification proceeding.

(c) Upon being advised that an administrative law judge has been designated, the department shall immediately file a

copy of the application and all supporting documents with the administrative law judge, who shall docket the application.

(2) The administrative law judge has all powers and duties granted to administrative law judges under chapter 120 and by the laws and rules of the department.

Section 50. Section 403.5251, Florida Statutes, is amended to read:

403.5251 ~~Distribution of~~ Application; schedules.--

(1)(a) The formal date of the filing of the application for certification and commencement of the review process for certification is the date on which the applicant submits:

1. Copies of the application for certification in a quantity and format, electronic or otherwise as prescribed by rule, to the department and other agencies identified in s. 403.526(2).

2. The application fee as specified under s. 403.5365 to the department.

The department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional agencies or persons entitled to notice and copies of the application and amendments, if any, within 7 days after receiving the application for certification and the application fees.

(b) In the application, the starting point and ending point of a transmission line must be specifically defined by the applicant. ~~Within 7 days after the filing of an application, the department shall provide the applicant and the Division of Administrative Hearings the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments.~~

(2) Within 15 ~~7~~ days after the formal date of the application filing ~~completeness has been determined~~, the department shall prepare a proposed schedule of dates for determination of completeness, submission of statements of issues, ~~determination of sufficiency, and~~ submittal of final reports, ~~from affected and other agencies~~ and other significant dates to be followed during the certification process, including dates for filing notices of appearances to be a party under s. 403.527(2) ~~pursuant to s. 403.527(4)~~. This schedule shall be provided by the department to the applicant, the administrative law judge, and the agencies identified under ~~pursuant to~~ subsection (1). Within 7 days after the filing of this proposed schedule, the administrative law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(3) ~~Within 7 days after completeness has been determined, the applicant shall distribute copies of the application to all agencies identified by the department pursuant to subsection (1).~~ Copies of changes and amendments to the application shall be timely distributed by the applicant to all agencies and parties who have received a copy of the application.

(4) Notice of the filing of the application shall be made in accordance with the requirements of s. 403.5363.

Section 51. Section 403.5252, Florida Statutes, is amended to read:

403.5252 Determination of completeness.--

(1)(a) Within 30 days after distribution of an application, the affected agencies shall file a statement with the department containing the recommendations of each agency

concerning the completeness of the application for certification.

(b) Within 7 ~~15~~ days after receipt of the completeness statements of each agency ~~an application~~, the department shall file a statement with the Division of Administrative Hearings, ~~and~~ with the applicant, and with all parties declaring its position with regard to the completeness~~, not the sufficiency,~~ of the application. The statement of the department shall be based upon its consultation with the affected agencies.

(2)~~(1)~~ If the department declares the application to be incomplete, the applicant, within 14 ~~15~~ days after the filing of the statement by the department, shall file with the Division of Administrative Hearings, with all parties, and with the department ~~a statement~~:

(a) A withdrawal of ~~Agreeing with the statement of the department and withdrawing~~ the application;

(b) Additional information necessary to make the application complete. After the department first determines the application to be incomplete, the time schedules under this act are not tolled if the applicant makes the application complete within the 14-day period. A subsequent finding by the department that the application remains incomplete tolls the time schedules under this act until the application is determined complete; ~~Agreeing with the statement of the department and agreeing to amend the application without withdrawing it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete; or~~

(c) A statement contesting the department's determination of incompleteness; or ~~statement of the department.~~

(d) A statement agreeing with the department and requesting additional time to provide the information necessary

to make the application complete. If the applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) ~~(2)~~ If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 21 ~~30~~ days after the filing of the statement by the department. The administrative law judge shall render a decision within 7 ~~10~~ days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute. Any substantially affected person who wishes to become a party to the hearing on the issue of completeness must file a motion no later than 10 days before the date of the hearing.

(c) ~~(a)~~ If the administrative law judge determines that the application was not complete ~~as filed~~, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act do ~~shall~~ not commence until the application is determined complete.

(d) ~~(b)~~ If the administrative law judge determines that the application was complete at the time it was declared incomplete ~~filed~~, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 14 days after the applicant files the

additional information, a recommendation on whether the agency believes the application is complete. Within 21 days after receipt of the additional information from the applicant submitted under paragraphs (2)(b), (2)(d), or (3)(c) and considering the recommendations of the affected agencies, the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

Section 52. Section 403.526, Florida Statutes, is amended to read:

403.526 Preliminary statements of issues, reports, and project analyses; ~~and~~ studies.--

(1) Each affected agency that is required to file a report ~~which received an application~~ in accordance with this section ~~s. 403.5251(3)~~ shall submit a preliminary statement of issues to the department and all parties ~~the applicant~~ no later than 50 ~~60~~ days after the filing ~~distribution~~ of the ~~complete~~ application. Such statements of issues shall be made available to each local government for use as information for public meetings held under ~~pursuant to~~ s. 403.5272. The failure to raise an issue in this preliminary statement of issues does ~~shall~~ not preclude the issue from being raised in the agency's report.

(2)(a) The following ~~affected~~ agencies shall prepare reports as provided below and shall submit them to the department and the applicant no later than ~~within~~ 90 days after the filing ~~distribution~~ of the ~~complete~~ application:

1. The department shall prepare a report as to the impact of each proposed transmission line or corridor as it relates to matters within its jurisdiction.

2. Each water management district in the jurisdiction of which a proposed transmission line or corridor is to be located shall prepare a report as to the impact on water resources and other matters within its jurisdiction.

3. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed transmission line or corridor, based on the degree to which the proposed transmission line or corridor is consistent with the applicable portions of the state comprehensive plan, emergency management, and other matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed transmission line or corridor with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

4. The Fish and Wildlife Conservation Commission shall prepare a report as to the impact of each proposed transmission line or corridor on fish and wildlife resources and other matters within its jurisdiction.

5. Each local government shall prepare a report as to the impact of each proposed transmission line or corridor on matters within its jurisdiction, including the consistency of the proposed transmission line or corridor with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed transmission line or corridor, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means. A ~~No~~ change by the responsible local government or local agency in local comprehensive plans, zoning ordinances, or other regulations made after the date required for the filing of the local government's report required by this section is not ~~shall be~~

applicable to the certification of the proposed transmission line or corridor unless the certification is denied or the application is withdrawn.

6. Each regional planning council shall present a report containing recommendations that address the impact upon the public of the proposed transmission line or corridor based on the degree to which the transmission line or corridor is consistent with the applicable provisions of the strategic regional policy plan adopted under ~~pursuant to~~ chapter 186 and other impacts of each proposed transmission line or corridor on matters within its jurisdiction.

7. The Department of Transportation shall prepare a report as to the impact of the proposed transmission line or corridor on state roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction.

8. The commission shall prepare a report containing its determination under s. 403.537 and the report may include the comments from the commission with respect to any other subject within its jurisdiction.

9. Any other agency, if requested by the department, shall also perform studies or prepare reports as to subjects within the jurisdiction of the agency which may potentially be affected by the proposed transmission line.

(b) Each report must ~~shall~~ contain:

1. A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the proposed corridor to be certified. Failure to include the notice shall be treated as a waiver from the nonprocedural requirements of that agency.

2. A recommendation for approval or denial of the application.

3. The ~~information on variances required by s. 403.531(2) and~~ proposed conditions of certification on matters within the jurisdiction of each agency. For each condition proposed by an agency, the agency shall list the specific statute, rule, or ordinance, as applicable, which authorizes the proposed condition.

(c) Each reviewing agency shall initiate the activities required by this section no later than 15 days after the ~~complete~~ application is filed ~~distributed~~. Each agency shall keep the applicant and the department informed as to the progress of its studies and any issues raised thereby.

(d) When an agency whose agency head is a collegial body, such as a commission, board, or council, is required to submit a report pursuant to this section and is required by its own internal procedures to have the report reviewed by its agency head prior to finalization, the agency may submit to the Department a draft version of the report by the deadline indicated in subsection (a), and shall submit a final version of the report after review by the agency head, and no later than 15 days after the deadline indicated in subsection (a).

(e) Receipt of an affirmative determination of need from the commission by the submittal deadline for agency reports under paragraph (a) is a condition precedent to further processing of the application.

(3) The department shall prepare a project ~~written~~ analysis containing ~~which contains~~ a compilation of agency reports and summaries of the material contained therein which shall be filed with the administrative law judge and served on all parties no later than 115 ~~135~~ days after the application is

filed ~~complete application has been distributed to the affected agencies~~, and which shall include:

(a) A statement indicating whether the proposed electric transmission line will be in compliance with the rules of the department and affected agencies.

(b) ~~(a)~~ The studies and reports required by this section and s. 403.537.

(c) ~~(b)~~ Comments received from any other agency or person.

(d) ~~(c)~~ The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(4) The failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, is ~~shall~~ not ~~be~~ grounds for the alteration of any time limitation in this act under ~~pursuant to~~ s. 403.528. ~~Neither~~ The failure to submit a preliminary statement of issues or a report, or ~~nor~~ the inadequacy of the preliminary statement of issues or report, are not ~~shall be~~ grounds to deny or condition certification.

Section 53. Section 403.527, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 403.527, F.S., for present text.)

403.527 Certification hearing, parties, participants.--

(1)(a) No later than 145 days after the application is filed, the administrative law judge shall conduct a certification hearing pursuant to ss. 120.569 and 120.57 at a central location in proximity to the proposed transmission line or corridor.

(b) Notice of the certification hearing and other public hearings provided for in this section and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5363.

(2)(a) Parties to the proceeding shall be:

1. The applicant.

2. The department.

3. The commission.

4. The Department of Community Affairs.

5. The Fish and Wildlife Conservation Commission.

6. The Department of Transportation.

7. Each water management district in the jurisdiction of which the proposed transmission line or corridor is to be located.

8. The local government.

9. The regional planning council.

(b) Any party listed in paragraph (a), other than the department or the applicant, may waive its right to participate in these proceedings. If any listed party fails to file a notice of its intent to be a party on or before the 30th day before the certification hearing, the party is deemed to have waived its right to be a party unless its participation would not prejudice the rights of any party to the proceeding.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon the filing with the administrative law judge of a notice of intent to be a party by an agency, corporation, or association described in subparagraphs 1. and 2. or a petition for intervention by a person described in subparagraph 3. no later than 30 days before the date set for the certification hearing, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation of natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed transmission line or corridor is to be located.

3. Any person whose substantial interests are affected and being determined by the proceeding.

(d) Any agency whose properties or works may be affected shall be made a party upon the request of the agency or any party to this proceeding.

(3)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant.

2. The department.

3. State agencies.

4. Regional agencies, including regional planning councils and water management districts.

5. Local governments.

6. Other parties.

(b) When appropriate, any person may be given an opportunity to present oral or written communications to the administrative law judge. If the administrative law judge proposes to consider such communications, all parties shall be

given an opportunity to cross-examine, challenge, or rebut the communications.

(4) One public hearing where members of the public who are not parties to the certification hearing may testify shall be held within the boundaries of each county, at the option of any local government.

(a) A local government shall notify the administrative law judge and all parties not later than 21 days after the application has been determined complete as to whether the local government wishes to have a public hearing. If a filing for an alternate corridor is accepted for consideration under s. 403.5271(1) by the department and the applicant, any newly affected local government must notify the administrative law judge and all parties not later than 10 days after the data concerning the alternate corridor has been determined complete as to whether the local government wishes to have such a public hearing. The local government is responsible for providing the location of the public hearing if held separately from the certification hearing.

(b) Within 5 days after notification, the administrative law judge shall determine the date of the public hearing, which shall be held before or during the certification hearing. If two or more local governments within one county request a public hearing, the hearing shall be consolidated so that only one public hearing is held in any county. The location of a consolidated hearing shall be determined by the administrative law judge.

(c) If a local government does not request a public hearing within 21 days after the application has been determined complete, persons residing within the jurisdiction of the local

government may testify during that portion of the certification hearing at which public testimony is heard.

(5) At the conclusion of the certification hearing, the administrative law judge shall, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 45 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

(6)(a) No later than 25 days before the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of material fact to be raised at the certification hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing in accordance with s. 403.5363.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.529(1)(a).

2. Parties may submit proposed final orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearing and the recording and transcription of the proceedings.

Section 54. Section 403.5271, Florida Statutes, is amended to read:

403.5271 Alternate corridors.--

(1) No later than 45 ~~50~~ days before ~~prior to~~ the originally scheduled certification hearing, any party may propose alternate transmission line corridor routes for consideration under ~~pursuant to~~ the provisions of this act.

(a) A notice of a ~~any such~~ proposed alternate corridor must ~~shall~~ be filed with the administrative law judge, all parties, and any local governments in whose jurisdiction the alternate corridor is proposed. The ~~Such~~ filing must ~~shall~~ include the most recent United States Geological Survey 1:24,000 quadrangle maps specifically delineating the corridor boundaries, a description of the proposed corridor, and a statement of the reasons the proposed alternate corridor should be certified.

(b)1. Within 7 days after receipt of the ~~such~~ notice, the applicant and the department shall file with the administrative law judge and all parties a notice of acceptance or rejection of a proposed alternate corridor for consideration. If the alternate corridor is rejected ~~either~~ by the applicant or the department, the certification hearing and the public hearings shall be held as scheduled. If both the applicant and the department accept a proposed alternate corridor for consideration, the certification hearing and the public hearings shall be rescheduled, if necessary.

2. If rescheduled, the certification hearing shall be held no more than 90 days after the previously scheduled certification hearing, unless the data submitted under paragraph (d) is determined to be incomplete, in which case the rescheduled certification hearing shall be held no more than 105 days after the previously scheduled certification hearing. If additional time is needed due to the alternate corridor crossing

a local government jurisdiction that was not previously affected, ~~in which case~~ the remainder of the schedule listed below shall be appropriately adjusted by the administrative law judge to allow that local government to prepare a report pursuant to s. 403.526(2)(a)5.

(c) Notice of the filing of the alternate corridor, of the revised time schedules, of the deadline for newly affected persons and agencies to file notice of intent to become a party, of the rescheduled hearing date, and of the proceedings ~~pursuant to s. 403.527(1)(b) and (c)~~ shall be published in accordance with s. 403.5363.

(d) Within 21 ~~25~~ days after acceptance of an alternate corridor by the department and the applicant, the party proposing an alternate corridor shall have the burden of providing all ~~additional~~ data to the agencies listed in s. 403.526(2) and newly affected agencies ~~s. 403.526~~ necessary for the preparation of a supplementary report on the proposed alternate corridor.

(e)1. Reviewing agencies shall advise the department of any issues concerning completeness no later than 15 days after the submittal of the data required by paragraph (d). Within 22 days after receipt of the data, the department shall issue a determination of completeness.

2. If the department determines that the data required by paragraph (d) is not complete, the party proposing the alternate corridor must file such additional data to correct the incompleteness. This additional data must be submitted within 14 days after the determination by the department.

3. If the department, within 14 days after receiving the additional data, determines that the data remains incomplete, the incompleteness of the data is deemed a withdrawal of the

proposed alternate corridor. The department may make its determination based on recommendations made by other affected agencies. ~~If the department determines within 15 days that this additional data is insufficient, the party proposing the alternate corridor shall file such additional data that corrects the insufficiency within 15 days after the filing of the department's determination. If such additional data is determined insufficient, such insufficiency of data shall be deemed a withdrawal of the proposed alternate corridor. The party proposing an alternate corridor shall have the burden of proof on the certifiability of the alternate corridor at the certification hearing pursuant to s. 403.529(4). Nothing in this act shall be construed as requiring the applicant or agencies not proposing the alternate corridor to submit data in support of such alternate corridor.~~

(f) The agencies listed in s. 403.526(2) and any newly affected agencies ~~s. 403.526~~ shall file supplementary reports with the applicant and the department which address ~~addressing~~ the proposed alternate corridors no later than 24 ~~60~~ days after the ~~additional~~ data ~~is~~ submitted pursuant to paragraph (d) or paragraph (e) is determined to be complete.

(g) The agency reports on alternate corridors must include all information required by s. 403.526(2) ~~agencies shall submit supplementary notice pursuant to s. 403.531(2) at the time of filing of their supplemental report~~.

(h) When an agency whose agency head is a collegial body, such as a commission, board, or council, is required to submit a report pursuant to this section and is required by its own internal procedures to have the report reviewed by its agency head prior to finalization, the agency may submit to the Department a draft version of the report by the deadline

indicated in subsection (f), and shall submit a final version of the report after review by the agency head, and no later than 7 days after the deadline indicated in subsection (f).

(i) ~~(h)~~ The department shall file with the administrative law judge, the applicant, and all parties a project ~~prepare a written~~ analysis consistent with s. 403.526(3) no more than 16 ~~at least 29~~ days after submittal of agency reports on ~~prior to the rescheduled certification hearing addressing~~ the proposed alternate corridor.

(2) If the original certification hearing date is rescheduled, the rescheduling shall not provide the opportunity for parties to file additional alternate corridors to the applicant's proposed corridor or any accepted alternate corridor. However, an amendment to the application which changes the alignment of the applicant's proposed corridor shall require rescheduling of the certification hearing, if necessary, so as to allow time for a party to file alternate corridors to the realigned proposed corridor for which the application has been amended. Any ~~such~~ alternate corridor proposal shall have the same starting and ending points as the realigned portion of the corridor proposed by the applicant's amendment, provided that the administrative law judge for good cause shown may authorize another starting or ending point in the area of the applicant's amended corridor.

(3) (a) Notwithstanding the rejection of a proposed alternate corridor by the applicant or the department, any party may present evidence at the certification hearing to show that a corridor proper for certification does not satisfy the criteria listed in s. 403.529 or that a rejected alternate corridor would meet the criteria set forth in s. 403.529. ~~No~~ Evidence may not ~~shall~~ be admitted at the certification hearing on any alternate

corridor, unless the alternate corridor was proposed by the filing of a notice at least 45 ~~50~~ days before ~~prior to~~ the originally scheduled certification hearing pursuant to this section. Rejected alternate corridors shall be considered by the board as provided in s. 403.529(4) and (5).

(b) The party proposing an alternate corridor has the burden to prove that the alternate corridor can be certified at the certification hearing. This act does not require an applicant or agency that is not proposing the alternate corridor to submit data in support of the alternate corridor.

(4) If an alternate corridor is accepted by the applicant and the department pursuant to a notice of acceptance as provided in this subsection and the ~~such~~ corridor is ultimately determined to be the corridor that would meet the criteria set forth in s. 403.529(4) and (5), the board shall certify that corridor.

Section 55. Section 403.5272, Florida Statutes, is amended to read:

403.5272 ~~Local governments;~~ Informational public meetings.--

(1) A local government whose jurisdiction is to be crossed by a proposed corridor ~~governments~~ may hold one informational public meeting ~~meetings~~ in addition to the hearings specifically authorized by this act on any matter associated with the transmission line proceeding. The ~~Such~~ informational public meeting may be conducted by the local government or the regional planning council and shall ~~meetings should~~ be held no later than 55 ~~80~~ days after the application is filed. The purpose of an informational public meeting is for the local government or regional planning council to further inform the ~~general~~ public about the transmission line proposed, obtain comments from the

public, and formulate its recommendation with respect to the proposed transmission line.

(2) Informational public meetings shall be held solely at the option of each local government or regional planning council. It is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, a ~~no~~ party other than the applicant and the department is not ~~shall be~~ required to attend the ~~such~~ informational public meetings ~~hearings~~.

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting, with notice sent to all parties listed in s. 403.527(2)(a), not less than 5 days before the meeting.

(4)~~(3)~~ The failure to hold an informational public meeting or the procedure used for the informational public meeting are ~~shall~~ not ~~be~~ grounds for the alteration of any time limitation in this act under ~~pursuant to~~ s. 403.528 or grounds to deny or condition certification.

Section 56. Section 403.5275, Florida Statutes, is amended to read:

403.5275 Amendment to the application.--

(1) Any amendment made to the application before certification shall be sent by the applicant to the administrative law judge and to all parties to the proceeding.

(2) Any amendment to the application made before ~~prior to~~ certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered "good cause" for alteration of time limits pursuant to s. 403.528.

Section 57. Section 403.528, Florida Statutes, is amended to read:

403.528 Alteration of time limits.--

(1) Any time limitation in this act may be altered by the administrative law judge upon stipulation between the department and the applicant unless objected to by any party within 5 days after notice or for good cause shown by any party.

(2) A comprehensive application encompassing more than one proposed transmission line may be good cause for alternation of time limits.

Section 58. Section 403.529, Florida Statutes, is amended to read:

403.529 Final disposition of application.--

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under s. 403.527(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and state the reasons for issuance or denial.

(b) If the administrative law judge does not grant a request to cancel the certification hearing under the provisions of s. 403.527(6) within 60 ~~30~~ days after receipt of the administrative law judge's recommended order, the board shall act upon the application by written order, approving in whole, approving with such conditions as the board deems appropriate, or denying the certification and stating the reasons for issuance or denial.

(2) The issues that may be raised in any hearing before the board shall be limited to matters raised in the certification proceeding before the administrative law judge or raised in the recommended order of the administrative law judge.

All parties, or their representatives, or persons who appear before the board shall be subject to ~~the provisions of~~ s. 120.66.

(3) If certification is denied, the board, or secretary if applicable, shall set forth in writing the action the applicant would have to take to secure the approval of the application ~~by the board~~.

(4) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of the transmission line corridor and the construction, operation, and maintenance of the transmission line will:

(a) Ensure electric power system reliability and integrity;

(b) Meet the electrical energy needs of the state in an orderly, economical, and timely fashion;

(c) Comply with applicable nonprocedural requirements of agencies;

(d) Be consistent with applicable provisions of local government comprehensive plans, if any; and

(e) Effect a reasonable balance between the need for the transmission line as a means of providing reliable, economically efficient electric energy, as determined by the commission, under s. 403.537, ~~abundant low-cost electrical energy~~ and the impact upon the public and the environment resulting from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines.

(5)(a) Any transmission line corridor certified by the board, or secretary if applicable, shall meet the criteria of this section. When more than one transmission line corridor is

proper for certification under ~~pursuant to~~ s. 403.522(10) and meets the criteria of this section, the board, or secretary if applicable, shall certify the transmission line corridor that has the least adverse impact regarding the criteria in subsection (4), including costs.

(b) If the board, or secretary if applicable, finds that an alternate corridor rejected pursuant to s. 403.5271 meets the criteria of subsection (4) and has the least adverse impact regarding the criteria in subsection (4), including cost, of all corridors that meet the criteria of subsection (4), ~~then~~ the board, or secretary if applicable, shall deny certification or shall allow the applicant to submit an amended application to include the ~~such~~ corridor.

(c) If the board, or secretary if applicable, finds that two or more of the corridors that comply with ~~the provisions of~~ subsection (4) have the least adverse impacts regarding the criteria in subsection (4), including costs, and that the ~~such~~ corridors are substantially equal in adverse impacts regarding the criteria in subsection (4), including costs, ~~then~~ the board, or secretary if applicable, shall certify the corridor preferred by the applicant if the corridor is one proper for certification under ~~pursuant to~~ s. 403.522(10).

(6) The issuance or denial of the certification is ~~by the board shall be~~ the final administrative action required as to that application.

Section 59. Section 403.531, Florida Statutes, is amended to read:

403.531 Effect of certification.--

(1) Subject to the conditions set forth therein, certification shall constitute the sole license of the state and any agency as to the approval of the location of transmission

line corridors and the construction, operation, and maintenance of transmission lines. The certification is ~~shall be~~ valid for the life of the transmission line, if ~~provided that~~ construction on, or condemnation or acquisition of, the right-of-way is commenced within 5 years after ~~of~~ the date of certification or such later date as may be authorized by the board.

(2)(a) The certification authorizes ~~shall authorize~~ the licensee ~~applicant~~ to locate the transmission line corridor and to construct and maintain the transmission lines subject only to the conditions of certification set forth in the ~~such~~ certification.

(b) The certification may include conditions that ~~which~~ constitute variances and exemptions from nonprocedural standards or rules ~~regulations~~ of the department or any other agency~~,~~ which were expressly considered during the certification review ~~proceeding~~ unless waived by the agency as provided in s. 403.526 ~~below~~ and which otherwise would be applicable to the location of the proposed transmission line corridor or the construction, operation, and maintenance of the transmission lines. ~~Each party shall notify the applicant and other parties at the time scheduled for the filing of the agency reports of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any corridor proposed for certification. Failure of such notification shall be treated as a waiver from the nonprocedural requirements of that agency.~~

(3)(a) The certification shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency under ~~pursuant to~~, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186,

chapter 253, chapter 258, chapter 298, chapter 370, chapter 372, chapter 373, chapter 376, chapter 380, chapter 381, ~~chapter 387,~~ chapter 403, chapter 404, the Florida Transportation Code, or 33 U.S.C. s. 1341.

(b) On certification, any license, easement, or other interest in state lands, except those the title of which is vested in the Board of Trustees of the Internal Improvement Trust Fund, shall be issued by the appropriate agency as a ministerial act. The applicant shall ~~be required to~~ seek any necessary interest in state lands the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund from the board of trustees before, during, or after the certification proceeding, and certification may be made contingent upon issuance of the appropriate interest in realty. However, ~~neither~~ the applicant and ~~nor~~ any party to the certification proceeding may not directly or indirectly raise or relitigate any matter that ~~which~~ was or could have been an issue in the certification proceeding in any proceeding before the Board of Trustees of the Internal Improvement Trust Fund wherein the applicant is seeking a necessary interest in state lands, but the information presented in the certification proceeding shall be available for review by the board of trustees and its staff.

(4) This act does ~~shall~~ not in any way affect the ratemaking powers of the commission under chapter 366. This act does ~~shall also~~ not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the commission.

(5) A ~~No~~ term or condition of certification may not ~~shall~~ be interpreted to preclude the postcertification exercise by any

party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings.

Section 60. Section 403.5312, Florida Statutes, is amended to read:

403.5312 Filing ~~Recording~~ of notice of certified corridor route.--

(1) Within 60 days after certification of a directly associated transmission line under ~~pursuant to~~ ss. 403.501-403.518 or a transmission line corridor under ~~pursuant to~~ ss. 403.52-403.5365, the applicant shall file with the department and, in accordance with s. 28.222, with the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice must ~~shall~~ consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and must ~~shall~~ state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the ~~such~~ county, whichever is sooner.

(3) The recording of this notice does ~~shall~~ not constitute a lien, cloud, or encumbrance on real property.

Section 61. Section 403.5315, Florida Statutes, is amended to read:

403.5315 Modification of certification.--A certification may be modified after issuance in any one of the following ways:

(1) The board may delegate to the department the authority to modify specific conditions in the certification.

(2) The licensee may file a petition for modification with the department or the department may initiate the modification upon its own initiative.

(a) A petition for modification must set forth:

1. The proposed modification;

2. The factual reasons asserted for the modification; and

3. The anticipated additional environmental effects of the proposed modification.

(b) ~~(2)~~ The department may modify the terms and conditions of the certification if no party objects in writing to the ~~such~~ modification within 45 days after notice by mail to the last address of record in the certification proceeding, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

(c) If objections are raised or the department denies the proposed modification, the licensee may file a request for hearing on the modification with the department. Such a request shall be handled pursuant to chapter 120.

(d) A request for hearing referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application but with time periods established by the administrative law judge commensurate with the significance of the modification requested. ~~If objections are raised, the applicant may file a petition for modification pursuant to subsection (3).~~

~~(3) The applicant or the department may file a petition for modification with the department and the Division of Administrative Hearings setting forth:~~

~~(a) The proposed modification;~~

~~(b) The factual reasons asserted for the modification; and~~

~~(c) The anticipated additional environmental effects of the proposed modification.~~

~~(4) Petitions filed pursuant to subsection (3) shall be disposed of in the same manner as an application but with time periods established by the administrative law judge commensurate with the significance of the modification requested.~~

Section 62. Section 403.5317, Florida Statutes, is created to read:

403.5317 Postcertification activities.--

(1)(a) If, subsequent to certification, a licensee proposes any material change to the application or prior amendments, the licensee shall submit to the department a written request for amendment and description of the proposed change to the application. The department shall, within 30 days after the receipt of the request for the amendment, determine whether the proposed change to the application requires a modification of the conditions of certification.

(b) If the department concludes that the change would not require a modification of the conditions of certification, the department shall notify, in writing, the licensee, all agencies, and all parties of the approval of the amendment.

(c) If the department concludes that the change would require a modification of the conditions of certification, the department shall notify the licensee that the proposed change to the application requires a request for modification under s. 403.5315.

(2) Postcertification submittals filed by a licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification. Each submittal must be reviewed by each agency on an expedited and priority basis because each facility certified under this act is a critical

infrastructure facility. Postcertification review may not be completed more than 90 days after complete information for a segment of the certified transmission line is submitted to the reviewing agencies.

Section 63. Section 403.5363, Florida Statutes, is created to read:

403.5363 Public notices; requirements.--

(1)(a) The applicant shall arrange for the publication of the notices specified in paragraph (b).

1. The notices shall be published in newspapers of general circulation within counties crossed by the transmission line corridors proper for certification. The required newspaper notices for filing of an application and for the certification hearing shall be one-half page in size in a standard-size newspaper or a full page in a tabloid-size newspaper and published in a section of the newspaper other than the section for legal notices. These two notices must include a map generally depicting all transmission corridors proper for certification. A newspaper of general circulation shall be the newspaper within a county crossed by a transmission line corridor proper for certification which newspaper has the largest daily circulation in that county and has its principal office in that county. If the newspaper having the largest daily circulation has its principal office outside the county, the notices must appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

2. The department shall adopt rules specifying the content of the newspaper notices.

3. All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(b) Public notices that must be published under this section include:

1. The notice of the filing of an application, which must include a description of the proceedings required by this act. The notice must describe the provisions of s. 403.531(1) and (2) and give the date by which notice of intent to be a party or a petition to intervene in accordance with s. 403.527(2) must be filed. This notice must be published no more than 21 days after the application is filed.

2. The notice of the certification hearing and any other public hearing permitted under s. 403.527. The notice must include the date by which a person wishing to appear as a party must file the notice to do so. The notice of the certification hearing must be published at least 65 days before the date set for the certification hearing.

3. The notice of the cancellation of the certification hearing, if applicable. The notice must be published at least 3 days before the date of the originally scheduled certification hearing.

4. The notice of the filing of a proposal to modify the certification submitted under s. 403.5315, if the department determines that the modification would require relocation or expansion of the transmission line right-of-way or a certified substation.

(2) The proponent of an alternate corridor shall arrange for the publication of the filing of the proposal for an alternate corridor, the revised time schedules, the date by which newly affected persons or agencies may file the notice of

intent to become a party, and the date of the rescheduled hearing. A notice listed in this subsection must be published in a newspaper of general circulation within the county or counties crossed by the proposed alternate corridor and comply with the content requirements set forth in paragraph (1)(a). The notice must be published not less than 50 days before the rescheduled certification hearing.

(3) The department shall arrange for the publication of the following notices in the manner specified by chapter 120:

(a) The notice of the filing of an application and the date by which a person intending to become a party must file a petition to intervene or a notice of intent to be a party. The notice must be published no later than 21 days after the application has been filed.

(b) The notice of any administrative hearing for certification, if applicable. The notice must be published not less than 65 days before the date set for a hearing, except that notice for a rescheduled certification hearing after acceptance of an alternative corridor must be published not less than 50 days before the date set for the hearing.

(c) The notice of the cancellation of a certification hearing, if applicable. The notice must be published not later than 7 days before the date of the originally scheduled certification hearing.

(d) The notice of the hearing before the siting board, if applicable.

(e) The notice of stipulations, proposed agency action, or a petition for modification.

Section 64. Section 403.5365, Florida Statutes, is amended to read:

403.5365 Fees; disposition.--The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1) An application fee.

(a) The application fee shall be ~~of~~ $100,000, plus $750 per mile for each mile of corridor in which the transmission line right-of-way is proposed to be located within an existing electric ~~electrical~~ transmission line right-of-way or within any existing right-of-way for any road, highway, railroad, or other aboveground linear facility, or $1,000 per mile for each mile of electric transmission line corridor proposed to be located outside the ~~such~~ existing right-of-way.

(b) ~~(a)~~ Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review of ~~reviewing~~ and acting upon the application and any costs for field services associated with monitoring construction and operation of the electric transmission line facility.

(c) ~~(b)~~ The following percentage ~~Twenty percent of the fees specified under this section, except postcertification fees,~~ shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services:~~.~~

1. Five percent to compensate for expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 10 percent if an administrative hearing under s. 403.527 is held.

(d) 1. ~~(c)~~ Upon written request with proper itemized accounting within 90 days after final agency action by the siting board or the department or the withdrawal of the

application, the agencies that prepared reports under s. 403.526 or s. 403.5271 or participated in a hearing under s. 403.527 or s. 403.5271 may submit a written request to the department for reimbursement of expenses incurred during the certification proceedings. The request must contain an accounting of expenses incurred, which may include time spent reviewing the application, ~~department shall reimburse the expenses and costs of the Department of Community Affairs, the Fish and Wildlife Conservation Commission, the water management district, regional planning council, and local government in the jurisdiction of which the transmission line is to be located. Such reimbursement shall be authorized for the~~ preparation of any studies required of the agencies by this act, ~~and for~~ agency travel and per diem to attend any hearing held under ~~pursuant to~~ this act, and for the local government or regional planning council providing additional notice of the informational public meeting. The department shall review the request and verify whether a claimed expense is valid. Valid expenses shall be reimbursed; however, if ~~to participate in the proceedings. In the event~~ the amount of funds available for reimbursement ~~allocation~~ is insufficient to provide for full compensation ~~complete reimbursement~~ to the agencies, reimbursement shall be on a prorated basis.

2. If the application review is held in abeyance for more than 1 year, the agencies may submit a request for reimbursement under subparagraph 1.

(e) ~~(d)~~ If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this section; ~~provided,~~ however, ~~that~~ if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after withdrawal.

(2) An amendment fee.

(a) If no corridor alignment change is proposed by the amendment, no amendment fee shall be charged.

(b) If a corridor alignment change under s. 403.5275 is proposed by the applicant, an additional fee of a minimum of $2,000 and $750 per mile shall be submitted to the department for use in accordance with this act.

(c) If an amendment is required to address issues, including alternate corridors under ~~pursuant to~~ s. 403.5271, raised by the department or other parties, no fee for the ~~such~~ amendment shall be charged.

(3) A certification modification fee.

(a) If no corridor alignment change is proposed by the licensee ~~applicant~~, the modification fee shall be $4,000.

(b) If a corridor alignment change is proposed by the licensee ~~applicant~~, the fee shall be $1,000 for each mile of realignment plus an amount not to exceed $10,000 to be fixed by rule on a sliding scale based on the load-carrying capability and configuration of the transmission line for use in accordance with subsection (1) ~~(2)~~.

Section 65. Subsection (1) of section 403.537, Florida Statutes, is amended to read:

403.537 Determination of need for transmission line; powers and duties.--

(1)(a) Upon request by an applicant or upon its own motion, the Florida Public Service Commission shall schedule a public hearing, after notice, to determine the need for a transmission line regulated by the Florida Electric Transmission Line Siting Act, ss. 403.52-403.5365. The ~~Such~~ notice shall be published at least 21 ~~45~~ days before the date set for the hearing and shall be published by the applicant in at least one-quarter page size notice in newspapers of general circulation,

and by the commission in the manner specified in chapter 120 ~~in the Florida Administrative Weekly~~, by giving notice to counties and regional planning councils in whose jurisdiction the transmission line could be placed, and by giving notice to any persons who have requested to be placed on the mailing list of the commission for this purpose. Within 21 days after receipt of a request for determination by an applicant, the commission shall set a date for the hearing. The hearing shall be held pursuant to s. 350.01 within 45 days after the filing of the request, and a decision shall be rendered within 60 days after such filing.

(b) The commission shall be the sole forum in which to determine the need for a transmission line. The need for a transmission line may not be raised or be the subject of review in another proceeding.

(c) ~~(b)~~ In the determination of need, the commission shall take into account the need for electric system reliability and integrity, the need for abundant, low-cost electrical energy to assure the economic well-being of the residents ~~citizens~~ of this state, the appropriate starting and ending point of the line, and other matters within its jurisdiction deemed relevant to the determination of need. The appropriate starting and ending points of the electric transmission line must be verified by the commission in its determination of need.

(d) ~~(c)~~ The determination by the commission of the need for the transmission line, as defined in s. 403.522(22) ~~s. 403.522(21)~~, is binding on all parties to any certification proceeding under ~~pursuant to~~ the Florida Electric Transmission Line Siting Act and is a condition precedent to the conduct of the certification hearing prescribed therein. An order entered pursuant to this section constitutes final agency action.

Section 66. Subsection (3) of section 373.441, Florida Statutes, is amended to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing.--

(3) The department shall review environmental resource permit applications for electrical distribution and transmission lines and other facilities related to the production, transmission, and distribution of electricity which are not certified under ss. 403.52-403.5365, the Florida Electric Transmission Line Siting Act, regulated under this part.

Section 67. Subsection (30) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.--The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(30) Establish requirements by rule that reasonably protect the public health and welfare from electric and magnetic fields associated with existing 230 kV or greater electrical transmission lines, new 230 kV and greater electrical transmission lines for which an application for certification under the Florida Electric Transmission Line Siting Act, ss. 403.52-403.5365, is not filed, new or existing electrical transmission or distribution lines with voltage less than 230 kV, and substation facilities. Notwithstanding any other provision in this chapter or any other law of this state or political subdivision thereof, the department shall have exclusive jurisdiction in the regulation of electric and magnetic fields associated with all electrical transmission and distribution lines and substation facilities. However, nothing

herein shall be construed as superseding or repealing the provisions of s. 403.523(1) and (10).

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 68. Paragraph (a) of subsection (3) of section 403.0876, Florida Statutes, is amended to read:

403.0876 Permits; processing.--

(3)(a) The department shall establish a special unit for permit coordination and processing to provide expeditious processing of department permits which the district offices are unable to process expeditiously and to provide accelerated processing of certain permits or renewals for economic and operating stability. The ability of the department to process applications under ~~pursuant to~~ this subsection in a more timely manner than allowed by subsections (1) and (2) is dependent upon the timely exchange of information between the applicant and the department and the intervention of outside parties as allowed by law. An applicant may request the processing of its permit application by the special unit if the application is from an area of high unemployment or low per capita income, is from a business or industry that is the primary employer within an area's labor market, or is in an industry with respect to which the complexities involved in the review of the application require special skills uniquely available in the headquarters office. The department may require the applicant to waive the 90-day time limitation for department issuance or denial of the permit once for a period not to exceed 90 days. The department may require a special fee to cover the direct cost of processing

special applications in addition to normal permit fees and costs. The special fee may not exceed $10,000 per permit required. Applications for renewal permits, but not applications for initial permits, required for facilities pursuant to the Electrical Power Plant Siting Act or the Florida Electric Transmission Line Siting Act may be processed under this subsection. Personnel staffing the special unit shall have lengthy experience in permit processing.

Section 69. Paragraph (b) of subsection (3) of section 403.809, Florida Statutes, is amended to read:

403.809 Environmental districts; establishment; managers; functions.--

(3)

(b) The processing of all applications for permits, licenses, certificates, and exemptions shall be accomplished at the district center or the branch office, except for those applications specifically assigned elsewhere in the department under s. 403.805 or to the water management districts under s. 403.812 and those applications assigned by interagency agreement as provided in this act. However, the secretary, as head of the department, may not delegate to district or subdistrict managers, water management districts, or any unit of local government the authority to act on the following types of permit applications:

1. Permits issued under s. 403.0885, except such permit issuance may be delegated to district managers.

2. Construction of major air pollution sources.

3. Certifications under the Florida Electrical Power Plant Siting Act or the Florida Electric Transmission Line Siting Act and the associated permit issued under s. 403.0885, if applicable.

4. Permits issued under s. 403.0885 to steam electric generating facilities regulated pursuant to 40 C.F.R. part 423.

5. Permits issued under s. 378.901.

Section 70. Sections 403.5253 and 403.5369, Florida Statutes, are repealed.

Section 71. Section 403.885, Florida Statutes, is amended to read:

403.885 Water Projects ~~Stormwater management; wastewater management; and Water Restoration~~ Grant Program.--

(1) The Department of Environmental Protection shall administer a grant program to use funds transferred pursuant to s. 212.20 to the Ecosystem Management and Restoration Trust Fund or other moneys as appropriated by the Legislature for water quality improvement, stormwater management, wastewater management, and water restoration and other water projects as specifically appropriated by the Legislature ~~project grants~~. Eligible recipients of such grants include counties, municipalities, water management districts, and special districts that have legal responsibilities for water quality improvement, water management, stormwater management, wastewater management, lake and river water restoration projects, and~~.~~ drinking water projects ~~are not eligible for funding~~ pursuant to this section.

(2) The grant program shall provide for the evaluation of annual grant proposals. The department shall evaluate such proposals to determine if they:

(a) Protect public health or ~~and~~ the environment.

(b) Implement plans developed pursuant to the Surface Water Improvement and Management Act created in part IV of chapter 373, other water restoration plans required by law, management plans prepared pursuant to s. 403.067, or other plans

~~adopted by local government for water quality improvement and water restoration.~~

~~(3) In addition to meeting the criteria in subsection (2), annual grant proposals must also meet the following requirements:~~

~~(a) An application for a stormwater management project may be funded only if the application is approved by the water management district with jurisdiction in the project area. District approval must be based on a determination that the project provides a benefit to a priority water body.~~

~~(b) Except as provided in paragraph (c), an application for a wastewater management project may be funded only if:~~

~~1. The project has been funded previously through a line item in the General Appropriations Act; and~~

~~2. The project is under construction.~~

~~(c) An application for a wastewater management project that would qualify as a water pollution control project and activity in s. 403.1838 may be funded only if the project sponsor has submitted an application to the department for funding pursuant to that section.~~

~~(4) All project applicants must provide local matching funds as follows:~~

~~(a) An applicant for state funding of a stormwater management project shall provide local matching funds equal to at least 50 percent of the total cost of the project; and~~

~~(b) An applicant for state funding of a wastewater management project shall provide matching funds equal to at least 25 percent of the total cost of the project.~~

~~The requirement for matching funds may be waived if the applicant is a financially disadvantaged small local government as defined in subsection (5).~~

~~(5) Each fiscal year, at least 20 percent of the funds available pursuant to this section shall be used for projects to assist financially disadvantaged small local governments. For purposes of this section, the term "financially disadvantaged small local government" means a municipality having a population of 7,500 or less, a county having a population of 35,000 or less, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce, or a county in an area designated by the Governor as a rural area of critical economic concern pursuant to s. 288.0656. Grants made to these eligible local governments shall not require matching local funds.~~

~~(6) Each year, stormwater management and wastewater management projects submitted for funding through the legislative process shall be submitted to the department by the appropriate fiscal committees of the House of Representatives and the Senate. The department shall review the projects and must provide each fiscal committee with a list of projects that appear to meet the eligibility requirements under this grant program.~~

Section 72. For the 2006-2007 fiscal year, the sum of $61,379 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the energy-efficient products sales tax holiday.

Section 73. For the 2006-2007 fiscal year, the sum of $8,587,000 in nonrecurring funds is appropriated from the General Revenue Fund and $6,413,000 in nonrecurring funds is

appropriated from the Grants and Donations Trust Fund in the Department of Environmental Protection for the purpose of funding the Renewable Energy Technologies Grants program authorized in s. 377.804, Florida Statutes. From the General Revenue Funds, $5,000,000 are contingent upon the coordination between the Department of Environmental Protection and the Department of Agriculture and Consumer Services pursuant to s. 377.804(6), Florida Statutes.

Section 74. For the 2006-2007 fiscal year, the sum of $2.5 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding commercial and consumer solar incentives authorized in s. 377.806, Florida Statutes.

Section 75. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to energy; providing legislative findings and intent; creating s. 366.92, F.S.; relating to the Florida renewable energy policy; providing intent; providing definitions; directing the Florida Public Service Commission to adopt goals for increasing the use of Florida renewable energy resources; authorizing the commission to adopt rules; creating s. 377.801, F.S.; creating the "Florida Renewable Energy Technologies and Energy Efficiency Act"; creating s. 377.802, F.S.; stating the purpose of the act; creating s. 377.803, F.S.; providing definitions; creating s. 377.804, F.S.; creating the Renewable Energy Technologies Grants Program;

providing program requirements and procedures, including matching funds; requiring the Department of Environmental Protection to adopt rules and coordinate with the Department of Agriculture and Consumer Services; requiring joint departmental approval for the funding of any project; creating s. 377.805, F.S.; establishing an energy-efficient products sales tax holiday; specifying a period during which the sale of energy-efficient products is exempt from certain tax; providing a limitation; providing a definition; prohibiting purchase of products by certain payment methods; providing that certain purchases or attempts to purchase are unfair methods of competition and punishable as such; creating s. 377.806, F.S.; creating the Solar Energy System Incentives Program; providing program requirements, procedures, and limitations; requiring the Department of Environmental Protection to adopt rules; creating s. 377.901, F.S.; creating the Florida Energy Council within the Department of Environmental Protection; providing purpose and composition; providing for appointment of members and terms; providing for reimbursement for travel expenses and per diem; requiring the department to provide certain services to the council; providing rulemaking authority; amending s. 212.08, F.S.; providing definitions for the terms "biodiesel," "ethanol," and "hydrogen fuel cells"; providing tax exemptions in the form of a rebate for the sale or use of certain equipment, machinery, and other materials for renewable energy technologies; providing eligibility requirements and tax credit limits; directing the Department of Revenue to adopt rules; directing the Department of Environmental Protection to determine and

publish certain information relating to such exemptions; providing for expiration of the exemption; amending s. 213.053, F.S.; authorizing the Department of Revenue to share certain information with the Department of Environmental Protection for specified purposes; amending s. 220.02, F.S.; providing the order of application of the renewable energy technologies investment tax credit; creating s. 220.192, F.S.; providing definitions; establishing a corporate tax credit for certain costs related to renewable energy technologies; providing eligibility requirements and credit limits; providing certain authority to the Department of Environmental Protection and the Department of Revenue; directing the Department of Environmental Protection to determine and publish certain information; providing for expiration of the tax credit; creating s. 220.193, F.S.; creating the Florida renewable energy production credit; providing definitions; providing a tax credit for the production and sale of renewable Florida energy; providing for the use and transfer of the tax credit; authorizing the Department of Revenue to adopt rules concerning the tax credit; providing an effective date; amending s. 220.13, F.S.; providing an addition to the definition of "adjusted federal income"; amending s. 186.801, F.S.; revising the provisions of electric utility 10-year site plans to include the effect on fuel diversity; amending s. 366.04, F.S.; revising the safety standards for public utilities; amending s. 366.05, F.S.; authorizing the Public Service Commission to adopt certain construction standards and make certain determinations; directing the commission to conduct a study and provide a report by a certain date;

amending s. 403.503, F.S.; revising and providing definitions applicable to the Florida Electrical Power Plant Siting Act; amending s. 403.504, F.S.; providing the Department of Environmental Protection with additional powers and duties relating to the Florida Electrical Power Plant Siting Act; amending s. 403.5055, F.S.; revising provisions for certain permits associated with applications for electrical power plant certification; amending s. 403.506, F.S.; revising provisions relating to applicability and certification of certain power plants; amending s. 403.5064, F.S.; revising provisions for distribution of applications and schedules relating to certification; amending s. 403.5065, F.S.; revising provisions relating to the appointment of administrative law judges and specifying their powers and duties; amending s. 403.5066, F.S.; revising provisions relating to the determination of completeness for certain applications; creating s. 403.50663, F.S.; authorizing certain local governments and regional planning councils to hold an informational public meeting about a proposed electrical power plant or associated facilities; providing requirements and procedures therefor; creating s. 403.50665, F.S.; requiring local governments to file certain land use determinations; providing requirements and procedures therefor; repealing s. 403.5067, F.S., relating to the determination of sufficiency for certain applications; amending s. 403.507, F.S.; revising required preliminary statement provisions for affected agencies; requiring a report as a condition precedent to the project analysis and certification hearing; amending s. 403.508, F.S.; revising provisions relating to land use and

certification hearings, including cancellation and responsibility for payment of expenses and costs; requiring certain notice; amending s. 403.509, F.S.; revising provisions relating to the final disposition of certain applications; providing requirements and provisions with respect thereto; amending s. 403.511, F.S.; revising provisions relating to the effect of certification for the construction and operation of proposed electrical power plants; providing that issuance of certification meets certain coastal zone consistency requirements; creating s. 403.5112, F.S.; requiring filing of notice for certified corridor routes; providing requirements and procedures with respect thereto; creating s. 403.5113, F.S.; authorizing postcertification amendments for power plant site certification applications; providing requirements and procedures with respect thereto; amending s. 403.5115, F.S.; requiring certain public notice for activities relating to electrical power plant site application, certification, and land use determination; providing requirements and procedures with respect thereto; directing the Department of Environmental Protection to maintain certain lists and provide copies of certain publications; amending s. 403.513, F.S.; revising provisions for judicial review of appeals relating to electrical power plant site certification; amending s. 403.516, F.S.; revising provisions relating to modification of certification for electrical power plant sites; amending s. 403.517, F.S.; revising provisions relating to supplemental applications for sites certified for ultimate site capacity; amending s. 403.5175, F.S.; revising provisions relating to

existing electrical power plant site certification; revising the procedure for reviewing and processing applications; requiring additional information to be included in certain applications; amending s. 403.518, F.S.; revising the allocation of proceeds from certain fees collected; providing for reimbursement of certain expenses; directing the Department of Environmental Protection to establish rules for determination of certain fees; eliminating certain operational license fees; providing for the application, processing, approval, and cancellation of electrical power plant certification; amending s. 403.519, F.S.; directing the Public Service Commission to consider fuel diversity and reliability in certain determinations; amending s. 403.52, F.S.; changing the short title to the "Florida Electric Transmission Line Siting Act"; amending s. 403.521, F.S.; revising legislative intent; amending s. 403.522, F.S.; revising definitions; defining the terms "licensee" and "maintenance and access roads"; amending s. 403.523, F.S.; revising powers and duties of the Department of Environmental Protection; requiring the department to collect and process fees, to prepare a project analysis, to act as clerk for the siting board, and to administer and manage the terms and conditions of the certification order and supporting documents and records; amending s. 403.524, F.S.; revising provisions for applicability, certification, and exemptions under the act; revising provisions for notice by an electric utility of its intent to construct an exempt transmission line; amending s. 403.525, F.S.; providing for powers and duties of the administrative law judge designated by the Division of

Administrative Hearings to conduct the required hearings; amending s. 403.5251, F.S.; revising application procedures and schedules; providing for the formal date of filing an application for certification and commencement of the certification review process; requiring the department to prepare a proposed schedule of dates for determination of completeness and other significant dates to be followed during the certification process; providing for the formal date of application distribution; requiring the applicant to provide notice of filing the application; amending s. 403.5252, F.S.; revising timeframes and procedures for determination of completeness of the application; requiring the department to consult with affected agencies; revising requirements for the department to file a statement of its determination of completeness with the Division of Administrative Hearings, the applicant, and all parties within a certain time after distribution of the application; revising requirements for the applicant to file a statement with the department, the division, and all parties, if the department determines the application is not complete; providing for the statement to notify the department whether the information will be provided; revising timeframes and procedures for contests of the determination by the department; providing for parties to a hearing on the issue of completeness; amending s. 403.526, F.S.; revising criteria and procedures for preliminary statements of issues, reports, and studies; revising timeframes; requiring that the preliminary statement of issues from each affected agency be submitted to the department and the applicant; revising criteria for the Department of Community Affairs' report;

requiring the Department of Transportation, the Public Service Commission, and any other affected agency to prepare a project report; revising required content of the report; providing for notice of any nonprocedural requirements not listed in the application; providing for failure to provide such notification; providing for a recommendation for approval or denial of the application; providing that receipt of an affirmative determination of need is a condition precedent to further processing of the application; requiring that the department prepare a project analysis to be filed with the administrative law judge and served on all parties within a certain time; amending s. 403.527, F.S.; revising procedures and timeframes for the certification hearing conducted by the administrative law judge; revising provisions for notices and publication of notices, public hearings held by local governments, testimony at the public-hearing portion of the certification hearing, the order of presentations at the hearing, and consideration of certain communications by the administrative law judge; requiring the applicant to pay certain expenses and costs; requiring the administrative law judge to issue a recommended order disposing of the application; requiring that certain notices be made in accordance with specified requirements and within a certain time; requiring the Department of Transportation to be a party to the proceedings; providing for the administrative law judge to cancel the certification hearing and relinquish jurisdiction to the Department of Environmental Protection upon request by the applicant or the department; requiring the department and the applicant to publish notice of such cancellation;

providing for parties to submit proposed recommended orders to the department when the certification hearing has been canceled; providing that the department prepare a recommended order for final action by the siting board when the hearing has been canceled; amending s. 403.5271, F.S.; revising procedures and timeframes for consideration of proposed alternate corridors; revising notice requirements; providing for notice of the filing of the alternate corridor and revised time schedules; providing for notice to agencies newly affected by the proposed alternate corridor; requiring the person proposing the alternate corridor to provide all data to the agencies within a certain time; providing for a determination by the department that the data is not complete; providing for withdrawal of the proposed alternate corridor upon such determination; requiring that agencies file reports with the applicant and the department which address the proposed alternate corridor; requiring that the department file with the administrative law judge, the applicant, and all parties a project analysis of the proposed alternate corridor; providing that the party proposing an alternate corridor has the burden of proof concerning the certifiability of the alternate corridor; amending s. 403.5272, F.S.; revising procedures for informational public meetings; providing for informational public meetings held by regional planning councils; revising timeframes; amending s. 403.5275, F.S.; revising provisions for amendment to the application prior to certification; amending s. 403.528, F.S.; providing that a comprehensive application encompassing more than one proposed transmission line may be good cause for altering

established time limits; amending s. 403.529, F.S.; revising provisions for final disposition of the application by the siting board; providing for the administrative law judge's or department's recommended order; amending s. 403.531, F.S.; revising provisions for conditions of certification; amending s. 403.5312, F.S.; requiring the applicant to file notice of a certified corridor route with the department; amending s. 403.5315, F.S.; revising the circumstances under which a certification may be modified after the certification has been issued; providing for procedures if objections are raised to the proposed modification; creating s. 403.5317, F.S.; providing procedures for changes proposed by the licensee after certification; requiring the department to determine within a certain time if the proposed change requires modification of the conditions of certification; requiring notice to the licensee, all agencies, and all parties of changes that are approved as not requiring modification of the conditions of certification; creating s. 403.5363, F.S.; requiring publication of certain notices by the applicant, the proponent of an alternate corridor, and the department; requiring the department to adopt rules specifying the content of such notices; amending s. 403.5365, F.S.; revising application fees and the distribution of fees collected; revising procedures for reimbursement of local governments and regional planning organizations; amending s. 403.537, F.S.; revising the schedule for notice of a public hearing by the Public Service Commission in order to determine the need for a transmission line; providing that the commission is the sole forum in which to determine the

need for a transmission line; amending ss. 373.441, 403.061, 403.0876, and 403.809, F.S.; conforming terminology to changes made by the act; repealing ss. 403.5253 and 403.5369, F.S., relating to determination of sufficiency of application or amendment to the application and the application of the act to applications filed before a certain date; amending 403.885, F.S.; revising provisions and requirements relating to the stormwater management, wastewater management, and water restoration grants program; providing for appropriations; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

2

Amendment No. (for drafter's use only)

Bill No. **1473**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative Attkisson offered the following:

Amendment to Amendment (1) by Representative Hasner (with title amendments)

Between lines 2470 and 2471 insert:

(4) In making its determination on a proposed electrical power plant using nuclear materials as fuel, the commission shall hold a hearing within 90 days after the filing of the petition to determine need and shall issue an order granting or denying the petition within 135 days after the date of the filing of the petition. The commission shall be the sole forum for the determination of this matter and the issues addressed in the petition, which accordingly shall not be reviewed in any other forum, or in the review of proceedings in such other forum. In making its determination to either grant or deny the petition, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

(a) The applicant's petition shall include:

1. A description of the need for the generation capacity.

2. A description of how the proposed nuclear power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. A description of and a nonbinding estimate of the cost of the nuclear power plant.

4. The annualized base revenue requirement for the first 12 months of operation of the nuclear power plant.

(b) In making its determination, the commission shall take into account matters within its jurisdiction, which it deems relevant, including whether the nuclear power plant will:

1. Provide needed base-load capacity.

2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

(c) No provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

(d) The commission's determination of need for a nuclear power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4)(a). An order entered pursuant to this section constitutes final agency action. Any petition for reconsideration of a final order on a petition for need determination shall be filed within 5 days after the date of such order. The commission's final order, including any order on reconsideration, shall be reviewable on appeal in the Florida Supreme Court. Inasmuch as delay in the determination of need will delay siting of a nuclear power plant or diminish the opportunity for savings to customers under the federal Energy Policy Act of 2005, the Supreme Court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over matters not accorded similar precedence by law.

(e) After a petition for determination of need for a nuclear power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred. Proceeding with the construction of the nuclear power plant following an order by the commission approving the need for the nuclear power plant under this act shall not constitute or be evidence of imprudence. Imprudence also shall not include any cost increases due to events beyond the utility's control. Further, a utility's

right to recover costs associated with a nuclear power plant may not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation shall be recovered pursuant to chapter 366.

Section 44. Section 366.93, Florida Statutes, is created to read:

366.93 Cost recovery for the siting, design, licensing, and construction of nuclear power plants.--

(1) As used in this section, the term:

(a) "Cost" includes, but is not limited to, all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant.

(b) "Electric utility" or "utility" has the same meaning as that provided in s. 366.8255(1)(a).

(c) "Nuclear power plant" or "plant" is an electrical power plant as defined in s. 403.503(12) that uses nuclear materials for fuel.

(d) "Preconstruction" is that period of time after a site has been selected through and including the date the utility completes site clearing work. Preconstruction costs shall be afforded deferred accounting treatment and shall accrue a carrying charge equal to the utility's allowance for funds during construction (AFUDC) rate until recovered in rates.

(2) Within 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant. Such mechanisms shall be designed to promote utility investment

in nuclear power plants and allow for the recovery in rates all prudently incurred costs, and shall include, but are not limited to:

(a) Recovery through the capacity cost recovery clause of any preconstruction costs.

(b) Recovery through an incremental increase in the utility's capacity cost recovery clause rates of the carrying costs on the utility's projected construction cost balance associated with the nuclear power plant. To encourage investment and provide certainty, for nuclear power plant need petitions submitted on or before December 31, 2010, associated carrying costs shall be equal to the pretax AFUDC in effect upon this act becoming law. For nuclear power plants for which need petitions are submitted after December 31, 2010, the utility's existing pretax AFUDC rate is presumed to be appropriate unless determined otherwise by the commission in the determination of need for the nuclear power plant.

(3) After a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules.

(4) When the nuclear power plant is placed in commercial service, the utility shall be allowed to increase its base rate charges by the projected annual revenue requirements of the nuclear power plant based on the jurisdictional annual revenue requirements of the plant for the first 12 months of operation. The rate of return on capital investments shall be calculated using the utility's rate of return last approved by the commission prior to the commercial inservice date of the nuclear power plant. If any existing generating plant is retired as a result of operation of the nuclear power plant, the commission

shall allow for the recovery, through an increase in base rate charges, of the net book value of the retired plant over a period not to exceed 5 years.

(5) The utility shall report to the commission annually the budgeted and actual costs as compared to the estimated inservice cost of the nuclear power plant provided by the utility pursuant to s. 403.519(4), until the commercial operation of the nuclear power plant. The utility shall provide such information on an annual basis following the final order by the commission approving the determination of need for the nuclear power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

(6) In the event the utility elects not to complete or is precluded from completing construction of the nuclear power plant, the utility shall be allowed to recover all prudent preconstruction and construction costs incurred following the commission's issuance of a final order granting a determination of need for the nuclear power plant. The utility shall recover such costs through the capacity cost recovery clause over a period equal to the period during which the costs were incurred or 5 years, whichever is greater. The unrecovered balance during the recovery period will accrue interest at the utility's weighted average cost of capital as reported in the commission's earnings surveillance reporting requirement for the prior year.

========== T I T L E A M E N D M E N T ==========

Remove line 4175 and insert:

certain determinations; providing requirements and procedures for determination of need for certain power plants; providing an exemption from purchased power supply

bid rules under certain circumstances; creating s. 366.93, F.S.; providing definitions; requiring the Public Service Commission to implement rules related to nuclear power plant cost recovery; requiring a report; amending s. 403.52.F.S.; changing